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Legal Analysis of the Education of the Handicapped Act: Unresolved Issues of Hospital Placement and Medically Related Services: Implications for In-Service Education of School Personnel

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LEGAL ANALYSIS OF THE EDUCATION OF THE HANDICAPPED ACT: UNRESOLVED ISSUES OF HOSPITAL PLACEMENT AND MEDICALLY RELATED SERVICES; IMPLICATIONS FOR IN-SERVICE EDUCATION OF SCHOOL PERSONNEL

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CHAPTER I

INTRODUCTION

Background

In 1975, President Gerald Ford signed into law, Public Law 94-142, the Education for All Handicapped Children Act (EAHCA), sometimes referred to as the Education of the Handicapped Act (EHA) and changed by act of Congress to the Individuals with Disabilities Act (IDEA) as of October 30, 1990. When Ford approved this law, he was enacting a descendent of a long line of legislative amendments which had evolved to guarantee handicapped children the right to a free and appropriate public education (FAPE). The EAHCA is easier understood, then, as the "Bill of Educational Rights" for the handicapped.

Schimmel (1983) concluded, the question is no longer whether handicapped children have a right to an education, but rather, how their right to an "appropriate education" is to be defined (5).

The implementation of this law has subsequently led to a myriad of state laws, court cases, judicial rulings, educational analyses, and major changes in the public schools of the United States, having special implications for school administrators who have been charged to provide

free and appropriate educations for the handicapped students they serve.

Public school administrators of today face an ever-increasing number of legal issues at the school site. The complexities of the EAHCA and its stipulated special education and related service requirements have become a dominant source of rapidly expanding litigation, which tends to divert already scarce financial resources from educational programs to legal expenses. It is important that school leaders know this law, communicate its intent, implement its provisions, and be effective in doing so in order to provide the most appropriate education to the handicapped and to avoid costly litigation, which in many instances, has led to monetary damages, attorneys' fees, and even loss of federal funding.

The federal and California statutes which establish the educational rights of handicapped students, combined with current and sometimes conflicting court decisions, comprise a voluminous, complex, and difficult-to-understand body of law. Schimmel (1983) pointed out that

> since a specific definition of what constitutes a free appropriate public education is not included in the EAHCA, it has been left up to the courts to decide on a definition pertinent to each case. The definitions from cases have not been uniform (5).

The difficult and human issues involved in the education of the handicapped are further complicated by two characteristics. First, the legal principles involved with

education for the handicapped are relatively new. Most of this body of law has been established since 1975. Second, this body of law changes rapidly. In a 1981 study, the National Center for State Courts estimated that litigation involving the rights of handicapped students comprised 35 to 40 percent of all civil cases involving the rights of students filed since 1976 (Zirkel 1989, 20-21).

Although major uncertainties continue to surround many aspects of legal compliance, test cases are fewer now than when the EAHCA was first implemented.

> Not many organizations can sustain the expense of protracted court proceedings, and legal advocates are reluctant to initiate major class action suits in a political climate they perceive as increasingly hostile to broad interpretations of the law (Singer and Butler 1987, 144).

Even though their study is not to be perceived as a national study, Singer and Butler (1987, 144) suggested that in the five communities they studied, legal and administrative actions to enforce compliance have waned dramatically. According to Singer and Butler, a predictable advocacy cycle has been enacted: an initial flurry of activity, followed by institutionalization of the law, and then after ten years, the tendency among many groups to turn to other issues and priorities. In the implementation of the EAHCA, there have been and continue to be issues and/or grievances which, even after being processed through administrative hearings that have well established precedence, fail to be resolved except through judicial rulings.

Statement of the Problem

Two common problems in the implementation of the EAHCA that have failed to be resolved except by the courts deal with disputes on appropriate special education placements, i.e., public versus private school and residential versus day school, and disputes on "medical service" limitations in the EAHCA related services definitions. Further, related to both issues, a major problem has arisen which is linked to the divergence of opinions of school administrators who must make educational/fiscal decisions under the EAHCA while attempting to morally and ethically comply with the philosophical and legal mandates of the EAHCA.

Purpose of the Study

The purpose of this study was to clarify issues dealing specifically with implementing the stipulations of the EAHCA regarding appropriate special education placement and special education related services, in particular exempted medical services, especially in light of the stringent fiscal status in most public schools today. This study examines issues of operational special education and indirect costs faced by educational decision makers as they are confronted with fiscal, education, and legal variables in their attempts to comply with the EAHCA. The hidden costs are predominately those related to litigation.

This study provides an historical perspective on how handicapped education was implemented prior to 1975 and then subsequent to passage of P.L. 94-142 (the EAHCA) in 1975. The study focuses on definitions stipulated in federal statutes, especially those regarding placement and medical related services. Current California statutes and administrative regulations are reviewed, along with federal and state case law dealing with judicial findings and holdings regarding compliance with EAHCA placement and related service requirements.

The total study, including the history of education for the handicapped, current operating procedures in California, and the most recent judicial findings and holdings, serves as the content basis for a staff development program in the Clovis Unified School District (hereafter referred to as Clovis Unified) for site principals, teachers, and special education managers.

Methodology

A legal case study of a recent Clovis Unified litigation, which focused on appropriate special education placement and related services, is the focal point for an examination of procedural steps required by the EAHCA of parents and school district officials in order to be in compliance with not only the EAHCA, but also the growing body of federal and state judicial holdings with regard to education for the handicapped. First, the case cited

demonstrates the due process procedures existent for the protection of handicapped students, their parents, and the educational institutions responsible for providing a FAPE. Second, the case illustrates the administrative hearings and judicial appeals available to the handicapped students and the responsible school district. Third, the case cited illustrates the evolving nature of judicial interpretations in the implementation of the EAHCA and the effects of such rulings on educational decision makers.

Case Study: Michelle S.

The methodology used in this study was the examination of a legal case recently litigated in the U.S. Court of Appeals for the Ninth Circuit: Clovis Unified School District--Appellant v. California Office of Administrative Hearings, Michelle S., Real Party in Interest--Appellee (1990, 4811-17).

The nature of the case presents the question of whether schools must pay for the private psychiatric hospitalization of a handicapped child under the "related services" definitions of P.L. 94-142. In this case the U.S. District Court for the Eastern District of California ruled that Clovis Unified must pay for medical costs, the hospitalization of Michelle. Clovis Unified appealed that decision on the grounds that the district court ignored pertinent state special education policies, procedures, and laws that the state developed to ensure a free and

appropriate education to all handicapped children within its jurisdiction, and that the district court's rulings placed an unwarranted obligation to pay for hospitalization on Clovis Unified that Congress did not intend.

Generally, the facts were not disputed and are briefly recited as follows. Michelle S. was a ten-year-old girl who was seriously emotionally disturbed and was entitled to special education and related services. Both Michelle's parents and Clovis Unified stipulated that she was in need of residential placement in order to receive an appropriate education.

Michelle S. was born in 1977 and adopted in 1981. In 1982, at age five, she exhibited severe emotional disturbances in the public schools of the state of Washington. She was hospitalized for two months for emotional difficulties in late 1983.

In June 1984, Michelle S. and her family moved to Riverside, California, where she was placed in a mental health day treatment center because of her tantrums and destructive behavior. From there she was placed in a mental health residential treatment program. This program offered a special education day class which included a full instructional day. In this program, Michelle S. performed at grade level.

In January 1985, Michelle S.'s parents moved to Fresno while Michelle S. remained in Riverside. Michelle S.

continued to perform adequately in her special education day class; however, her emotional condition deteriorated. In March 1985, the Riverside Mental Health Residential Treatment Program gave notice that it could no longer meet the needs of Michelle S. and recommended that she be placed in a licensed acute care facility. In mid-March 1985, King's View Hospital, a licensed acute care psychiatric hospital located in Reedley, a rural community near Fresno, accepted Michelle S. The Kings Canyon Unified School District became the educational agency responsible for the special educational program for Michelle S. Kings View Hospital is located within that district's boundaries. Kings Canyon Unified's educational expenses were borne by Clovis Unified, as mandated by state procedures, based on the parents' residence in the Clovis Unified School District.

It must be noted that Michelle S.'s parents unilaterally placed Michelle S. at Kings View because of the acute psychological care she required. The residential/ medical fees were paid by the parents' medical insurance. In July 1985, the parents' medical insurance ran out.

In July 1985, Michelle S.'s parents notified Clovis Unified that they wanted Clovis Unified to pay for the residential costs of Michelle S.'s placement at Kings View Hospital because their domicile was within the attendance boundaries of the Clovis Unified School District.

The parents of Michelle S. and Clovis Unified administrators met and discussed alternative placements. Clovis Unified first recommended a State Diagnostic School, a temporary residential placement located in Fresno, which could provide additional evaluation information on Michelle's educational needs. A second recommendation was Re-Ed West, a residential school located in Sacramento, California, which provides an intensive educational program for severely emotionally disturbed children, including a six-hour-a-day instructional program coordinated with a counseling and residential program. When no alternative placement was agreed to by the parents, they filed for an administrative hearing requesting placement at Kings View at the expense of Clovis Unified.

After the administrative hearing was held, the independent hearing officer ruled that Michelle S. should be placed at Kings View for the 1985-86 school year (Civil No. CV-F-479 E.D.D., U.S. Dist. Crt., Eastern District of California). In September 1985, Clovis Unified filed for a temporary restraining order in the U.S. District Court; the motion was denied.

Clovis Unified, with the assistance of the State Department of Education, sought a trial date in October 1985. A date was set, then postponed until March 1986.

An interesting and further complicating factor was introduced into the Michelle S. case when Kings View

Hospital was found to have strong affiliations with the Mennonite Church and that pastoral assessments and counseling were part of the overall treatment program. Since state law does not allow for the certification of sectarian nonpublic schools and agencies, the State Department of Education withdrew Kings View's certification (California, Education Code 1980, 56365 et. seq.). When Clovis Unified tried to add the issue of the sectarian status of Kings View as an amended complaint for the March 1986 trial date, the district court denied the amended complaint addition.

The trial was held, and in June and July 1986, the Findings of Fact and Conclusions of Law were entered by the district court, as was a judgment for Michelle S.

The district court's denial of motions for a new trial and amendments for Findings of Facts and Conclusions of Law led Clovis Unified to file an appeal with the U.S. Court of Appeals for the Ninth Circuit. The final district court action was to grant a stay of execution judgment in December 1986.

Limitations

This study is limited to presenting, discussing, analyzing, and considering the law dealing specifically with appropriate special education placements and special education-related services, especially the medical services limitation statement in P.L. 94-142. An examination and

consideration of special education costs that the Congress and subsequent judicial interpretations meant to include and exclude under the law are also presented.

The issues present in the Michelle S. case lead to the following questions, which this study analyzes.

1. Must public school districts pay under the Education of the Handicapped Act (EAHCA) for the costs of psychiatric hospitalization for severely emotionally disturbed patients of school age?

2. May a district court order a public education agency to pay more than is necessary to confer some education benefit?

3. May a district court ignore a state's special education delivery system and a state's standards for educating handicapped children in nonpublic residential facilities?

4. May a district court refuse to consider the comparative costs for residential placements and for hospitalization?

5. May a district court ignore the sectarian nature of nonpublic residential or psychiatric hospitalization?

The formal answers to these questions were ultimately provided by the Ninth Circuit Court, but the intent of P.L. 94-142 and legal precedence in similar district court, appellate court, and landmark U.S. Supreme Court decisions indicated that it would have been a complete

departure from the evolving interpretation of special education case law regarding appropriate special education placement-related services, and costs of special education.

This study also presents a summary of litigation costs required to take such a case as Michelle S. to trial and through appeals for final resolution. The intent in doing so is to inform and/or remind public school administrators of the potential financial resource drain inherent in not understanding or implementing the law as Congress intended or as legal interpretation precedence leads.

CHAPTER II

REVIEW OF RELATED LITERATURE

Historical Perspective

The early history of the handicapped is primarily an unpleasant story of misunderstanding and mistreatment based on fear and superstition. According to Gearhart (1980), the pre-Christian era was marked with the common practices of abandonment or death for young children who were "defective" (26). While periodic attempts to improve the lot of the handicapped occurred, this variable treatment of the handicapped continued for centuries, until the late 1700s.

Special Schools: Institutionalization

In the early 1800s a permanent change for the better was initiated. Special schools were established to serve the deaf, the blind, the mentally retarded, and to a limited extent, the mentally ill. Throughout the 1880s, institutions for the handicapped were established in Europe and the United States. The institutional setting seemed to be the logical place for the handicapped, with a few individuals returning to mainstream society, but with most remaining institutionalized for life.

Lilly (1979), in examining historical and traditional perspectives of handicapped education, pointed

out that a link between intelligence measurement and the pervasive effects of intelligence on many aspects of social behavior caused treatment and control systems to be established that stressed separation of the handicapped from the normal population. This tendency, he claimed, was difficult to overcome. "It is difficult to maintain that the early 1900's was a pleasant time to live for a person with low measured intelligence or a handicapping condition" (Lilly 1979, 6).

Exclusionary Doctrine

An historical assessment of the educational rights of handicapped children prior to 1970 also provides a mixed picture of some supportive state legislative mandates and an entrenched exclusionary legal doctrine created by state lawmakers and supported by various levels of the judiciary (Data Research, Inc. 1987, 1).

Pruitt (1983, 1) found that New Jersey in 1911, New York in 1917, and Massachusetts in 1920 had produced legislative mandates addressing the needs of the handicapped. These generally were permissive in nature and interpreted as so by local school districts.

In contrast, the exclusionary legal doctrine established by state lawmakers and judiciaries supported a general public view that many handicapped children should not be educated in the public schools. Many handicapped students were generally denied access to public schools

under state laws which excused them from compulsory attendance and removed from public school officials any legal duty to grant them the same access that nonhandicapped students enjoyed (Johnson 1986, 1). These laws expressed society's belief that handicapped children could not benefit from education and that their presence in the public schools would have an adverse effect on the welfare of other students.

For example, Alaskan law excluded children with "bodily or mental conditions rendering attendance inadvisable" (Alaska 1971, Statutes, Title 14, chap. 30). Nevada's law allowed exclusion when the child's "physical or mental condition or attitude [was] such as to prevent or render inadvisable his attendance at school or his application to study" (Nevada 1963, Revised Statutes, sec. 392.050). Virginia's compulsory attendance statute included an exemption for "children physically or mentally incapacitated for school work" (Code of Virginia 1973, sec. 22.275.3).

Earlier judicial reviews found the courts permissive and supportive of the legal doctrine of exclusion from public education of the handicapped. In 1893, a Massachusetts court affirmed a school committee's exclusion of a handicapped child because he was "so weak in mind as not to derive any marked benefit from instruction and

further, that he [was] so troublesome to other children" (Watson v. City of Cambridge 1863, 864).

> His physical condition and ailment produces a depressing and nauseating effect upon the teachers and school children, . . . he takes up an undue portion of the teacher's time and attention, distracts attention of other pupils, and interferes generally with the discipline and progress of the school (Beattie v. Board of Education of City of Antigo 1919, 153-54).

The Wisconsin Supreme Court recognized that the boy had a constitutional right to attend public school. The court held, however, that the school board had the legal authority and, in this case, the duty to exclude the boy.

Special Classes

Gearhart (1980, 26) explained that as the twentieth century dawned, a new point of view was adopted regarding the proper physical setting for the education of the handicapped. It was proposed that, rather than sending handicapped children to separate schools or institutions, they should be provided special classes within the public schools. This special class concept became the accepted service mode until the mid-1960s.

Growth of Categories Served

Other significant changes that were happening included the growth of categories of handicaps that were being serviced in these special classes in public schools. In the 1930s one new area of handicapped education that came into its own was public school education of children with

"mild emotional disturbances" or behavior disorders. Until this time, programs for the emotionallly disturbed had been primarily residential. Treatment had been largely psychiatric in nature, and the residential centers for the emotionally disturbed had tended toward segregation, depersonalization, and often cruel custodial care. The increased demands on school-based services resulted in a large number of special classes for children who were judged as too disruptive for the regular classroom setting (Lilly 1979, 6).

Least Restrictive Environment

During the 1960s and increasingly in the 1970s, the concept of mainstreaming, or return to the least restrictive environment, became popular. A similar movement paralleled the mainstreaming concept in public schools, and that was the "normalization" process of the institutionalized. Basically, the movement was deinstitutionalization and return to the home community whenever possible (Gearhart 1980, 26).

Gearhart (1980, 27) explained that while "mainstreaming" and "normalization" were general trends, there was also a movement toward more services for more of the handicapped population, all provided at public expense. Promoted primarily by advocacy organizations of parents and professional special education associations, this increase in service was stimulated further by litigation which

spotlighted denial of equal rights to the handicapped and by legislation that made it mandatory for public agencies to serve the handicapped.

Mandated Services

This significant increase in the scope of the mandated services to be provided, coupled with a different frame of reference for the provision of these services, i.e., special classes, increasing interest in special education, and increasing litigation, was the status quo at the start of 1975. The end of an era was at hand.

This dawn of a new era and a different frame of reference was the same issue addressed by Schimmel (1983, 1) in his study of the Education for All Handicapped Children Act of 1975 (EAHCA).

In 1966, an ad hoc subcommittee on the Education and Labor Committee of the House of Representatives turned its attention to the needs of the handicapped and detailed the need for support of the education of handicapped children:

> The Subcommittee reported that only abut one-third of the approximately 5.5 million handicapped children were being provided an appropriate special education. The remaining two-thirds were either totally excluded from schools or sitting idly in regular classrooms awaiting the time when they were old enough to "drop out." The Subcommittee also learn that Federal programs directed at handicapped children were minimal, fractionated, uncoordinated, and frequently given a low priority in the education community (U.S. Congress, House 1975, 2).

ESEA Amendments of 1966

On the basis of this information, Congress reorganized the inadequate educational opportunities for handicapped children by enacting the Elementary and Secondary Education Act (ESEA) Amendments of 1966. Congress provided a new Title VI, which began a program of grants to states in order to assist states in the education of handicapped children (Pruitt 1983, 2). Congress also created a National Advisory Committee on Handicapped Children and a Bureau of Education for the Handicapped in the U.S. Department of Education (Schimmel 1983, 2). Title VI was repealed in 1971 and replaced with the ESEA Amendments of 1970. Under these amendments, a separate act was created, entitled the Education of the Handicapped Act of 1970 (Pruitt 1983, 2).

Congress remained active in introducing legislation supportive of education for the handicapped throughout the early 1970s. In 1974, P.L. 93-380 (ESEA Amendments of 1974) was signed into law (Pruitt 1983, 2). According to the Senate committee,

> this legislation was originally introduced as Senate 3614 on May 16, 1972. It followed a series of landmark court cases establishing in law the right to education for all handicapped children. Since those initial decisions in 1971 and 1972 and with similar decisions in 27 states, it is clear today that this "right to education" is no longer in question (U.S. Congress, Senate 1975, 6).

By 1971, thirty-three states had adopted supportive legislation for the handicapped, and by 1975, most states

had some form of mandatory legislation regarding the handicapped, but such legislation carried little or no enforcement mechanism (Pruitt 1983, 1).

Brown v. Board of Education

Congressional and judicial recognition of the education rights of the handicapped has relied heavily on Brown v. Board of Education (1954). In Brown, the United States Supreme Court established the right to equal education by stating that equal opportunity for education and the protection of law could not result in separate but equal schools. The court emphasized the importance of education in American society:

> Education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities. . . . It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. For these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity to an education (Brown v. Board of Education 1954, 483, 493).

Two judicial decisions which may have started the process that led to the adoption by Congress of the EAHCA of 1975 were PARC v. Commonwealth of Pennsylvania in 1971, a suit on behalf of retarded students decided by a U.S. district court in Pennsylvania, and Mills v. Board of Education, a 1972 decision in favor of all students excluded

from access to a public education in the District of Columbia.

PARC v. Commonwealth of Pennsylvania

The Pennsylvania Association for Retarded Children (PARC) brought a class action suit on behalf of all retarded students between the ages of six and twenty-one who were being excluded from public education by the Commonwealth of Pennsylvania. The goal of the suit was to establish the legal right of the retarded for access to a public education. Lawyer T. K. Gilhool argued violation of the Fourteenth Amendment Equal and Protection and Due Process Clauses and Commonwealth of Pennsylvania Constitution because it promised a public education for all children (PARC v. Pennsylvania 1972, 279). The district court did not have to render a decision because a Consent Agreement was drafted by the Pennsylvania attorney general that allowed placement of each mentally retarded student in a free public program of education and training appropriate to the student's capacity. Basically, the Consent Agreement allowed for the following: identification of mentally regarded students, provisions for educational services, parental notification, hearings with parents when educational placement was being changed, explanation of all procedures to parents, parental access to all student records, and parental review of appropriateness of an educational program. These provisions are the basic

underpinnings for current federal criteria in providing a FAPE.

Mills v. Board of Education

In the District of Columbia, seven students who were retarded and who were excluded from public schools sued for their own rights and the rights of similar students who were being excluded from access to public education. The District of Columbia school district board admitted responsibility, but claimed insufficient funds to provide education to all handicapped children. Only 3,880 of 18,000 identified mentally retarded students in the district were being served (Mills v. Board of Education 1972, 887-83).

The U.S. district court ruled summarily for the plaintiffs in 1972. The District of Columbia was violating the Due Process Clause of the Fifth Amendment of the U.S. Constitution by denying handicapped children access to public education while providing it to others. The resulting mandated program required the District of Columbia to locate (identify), to provide constitutionally adequate prior due process hearings on placement, to ensure periodic reviews of status and progress, and finally, to provide access to public education for all handicapped children, not just the mentally retarded (Mills v. Board of Education 1972, 877-83).

These two decisions opened public schools to all handicapped children. The subsequent requirements led to

greatly expanded special education programs, and sharp increases in school budgets. Advocates for the handicapped and various state education department officials turned to the Congress of the United States to find some of the money needed to meet the increased number of special education needs.

Congress responded to the need for more federal money to aid states in educating handicapped students. Specifically, they passed new grant programs and laws intended to guarantee legal rights for handicapped students. These laws--the Rehabilitation Act of 1975 (sec. 504) and P.L. 94-142 (EAHCA)--imposed on public schools of every state comprehensive legal responsibilities for education for the handicapped. These two laws are the basis for hundreds of federal and state court decisions regarding the education of the handicapped (Johnson 1986, 5).

The PARC and Mills cases greatly increased the pressure on Congress to spend even more federal money on state public school programs for handicapped children. Based on the results of those two litigations and similar cases in other states, Congress enacted two federal laws that have established the legal basis for states in providing every handicapped child with an appropriate education at public expense.

These two laws--the Rehabilitation Act of 1973 (sec. 504) and P.L. 94-142 (EAHCA)--are both based on

Congress's power to spend federal money for the general welfare and to regulate the way states use the federal funds they receive. Congress lacks constitutional power to regulate directly the public schools of the fifty states, but it has discovered that its legislative intent can be enforced by ensuring that federal funds are used to promote the general welfare or equal opportunity and protection under the law.

Section 504 of the Rehabilitation Act of 1973

Section 504 is not a federal grant program; it provides no money to aid handicapped persons. It does impose a duty on every recipient of federal funds not to discriminate against handicapped persons. The Office of Civil Rights (OCR) serves as the enforcement agency of the act. The OCR generally investigates complaints that allege violations of Section 504. The procedures of investigation are called "compliance reviews." The Section 504 issues that have most often attracted the OCR's education of handicapped interest include the following: locating and identifying handicapped children, notifying parents of rights and services available, proving program accessibility to students with orthopedic and sensory impairments, and making educational placements and changes in placements of handicapped children. The OCR provides written reports of its complaint investigations and its compliance reviews.

The agency's view of the requirements of the law are published in a specialized law reporter entitled Education for the Handicapped Law Report (EHLR).

Congress did not explicitly provide Section 504 a judicial enforcement through a "private right of action." However, various Supreme Court decisions have held that persons may sue to enforce their rights under Section 504. In Smith v. Robinson, the court held that a plaintiff may not use Section 504 to circumvent the extensive administrative procedures required by the EAHCA if the suit concerns the child's right to a free appropriate education (Smith v. Robinson 1984, 3457).

The Education for All Handicapped Children Act of 1975

The Education for All Handicapped Children Act of 1975 (EAHCA) is a federal grant program that provides substantial sums of federal money to states and local school districts to pay part of the cost of educating handicapped students in elementary and secondary schools. The EAHCA (P.L. 94-142) is an unusually detailed statute that sets forth a specific, complex, and comprehensive design that states must follow to qualify for the federal funds that the law authorizes. P.L. 94-142 requires that states have a policy assuring a free appropriate education to all handicapped children, effective september 1, 1978. The state's policy must provide expanded due process rights for

parents and children, including the right to appeal disagreements to an independent hearing officer, and the state policy must provide the right to sue. A state, further, must guarantee the development of an individualized education plan (IEP) to guide each handicapped student's education (Johnson 1986, 12).

The EAHCA (P.L. 94-142) is administratively enforced by the Office of Special Education Programs in the U.S. Department of Education's Office of Special Education and Rehabilitation Services. Coordinated writing of Section 504 and EAHCA regulations and a memorandum of understanding between the OCR and the Office of Special Education Programs have done much to achieve effective, efficient, and consistent application of the two enforcement agencies. In the EAHCA, Congress explicitly provided for parents to file individual law suits, if necessary, to gain free appropriate education for a handicapped child. Congress also required parents to complete specific administrative appeal processes before seeking judicial intervention.

The heart of P.L. 94-142 is revealed in its purpose statement (EAHCA 1980, sec. 1400 (c)). In essence, this act mandates that states are to seek out, identify, and guarantee a free appropriate public education (FAPE) to every handicapped child.

FAPE Definition

The specific definition of a FAPE is as follows:

> The term "free appropriate public education" means special education and related services which (a) have been provided at public expense, under public supervision and direction, and without charge, (b) meet the standards of the State education agency, (c) include an appropriate preschool, elementary, or secondary education in the State involved, and (d) are provided in conformity with the individualized education program (IEP) required under section 1414 (a) (5) of this title (EAHCA 1980, sec. 1401 (a) (18)).

This FAPE is intended to allow the nation's handicapped citizens to have full equality of opportunity, where before as many as half of the nation's handicapped were not receiving appropriate educational services. The act also states that it is in the national interest that the federal government assist state and local efforts to provide programs to meet the educational needs of handicapped children in order to assure equal protection of the law (EAHCA 1980, sec. 1400 (b)).

Handicapped Children Definition

The act has made very clear who the clientele are to be as it defines handicapped children as follows:

> The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech or emotionally disturbed, orthopedically impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children, or children with specific learning disabilities, who by reason thereof require special education and related services (EAHCA 1980, sec. 1401 (a)(1)).

Specific Learning Disabilities Definition

To clarify even further the phrase regarding specific learning disabilities in the previous paragraph, a definition has been further delineated in the act:

> The term "children with specific learning disabilities" means those children who have a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. Such disorders include such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. Such term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage (EAHCA 1980, sec. 1401 (a) (15)).

Special Education Definition

In setting out its goal for a FAPE for all handicapped children, Congress has also been very specific in describing the process in how this goal was to be achieved. The act clearly stated that a FAPE consists of special education and related services. The act defines special education as follows:

> The term "special education" means specially designed instruction, at no cost to parents or guardians, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions (EAHCA 1980, sec. 1401 (a) (16)).

Related Services Definition

Related services were also clearly stipulated.

> The term "related services" means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a handicapped child to benefit from special education, and includes the early identification and assessment of handicapping conditions in children (EAHCA 1980, sec. 1401 (o) (17)).

On August 5, 1986, President Reagan signed into law S. 415, the Handicapped Children's Protection Act of 1986, the so-called Attorney's Fees Bill. The urgency law reversed the U.S. Supreme Court Smith v. Robinson decision of July 5, 1984, and authorized courts to award reasonable fees to parents who, after having exhausted administrative procedures, prevailed in EAHCA civil court actions or administrative due process proceedings. This new public law, P.L. 99-372, protected children's rights to a free appropriate public education. The law was to be retroactive to all cases pending as of July 3, 1984, or decided between July 4, 1984, and August 5, 1984. The law also allowed filing of civil actions under laws other than P.L. 94-142, so long as parents first exhausted administrative remedies under P.L. 94-142 (Hinkle 1986, 3).

The provisions of P.L. 99-372 were included in the EAHCA in secs. 1415 (e) (4) and 1415 (f). The EAHCA (EHA) was retitled on October 30, 1990, to become the Individuals

with Disabilities Education Act (IDEA) (Data Research, 1991, 295).

California Historical Handicapped Education

The California development of special programs for the education of the handicapped had its origins in private charitable efforts and has moved steadily to the present era of public school responsibility. The evaluation of services matches in many ways the growth of handicapped education as depicted for the nation by Gearhart (1980) and Lilly (1979).

Special Schools and Classes

Special education in California began in 1860 when, by the authorization of the legislature, a residential school for the deaf was established in San Francisco (State of California, Department of Finance 1977, 1). In 1865, funds were authorized for a combined school for the blind and deaf, and such a school was established in Berkeley. The city of Los Angeles pioneered speech classes in the public school program in 1897, by opening a public day class for deaf children. Within the next three years, similar classes were opened in San Francisco and Oakland (Simmons 1973, 20).

Increased Categories of Service

In 1907, a law was passed making it permissible for school districts to establish visual systems of instruction for deaf pupils. During the next ten years, special education classes for deaf, hard of hearing, blind, and speech handicapped were instituted in several of the larger school districts in the state. By 1921, school districts were given authority to establish special classes for mentally retarded students (State of California, Assembly 1965, 14). The permissive authorization was not enough impetus for most districts.

Day Classes Versus Residential Schools

Experiences with special education for handicapped children during the first quarter of this century seemed to demonstrate that such children could be more successfully educated in day classes than in residential schools. In addition, cost was considerably less. Parents began to demand extended school facilities for their disabled youngsters, and such private organizations as the California Society for Crippled Children and the American Hearing Society began to press for legislative provisions that would give additional financial support to school districts to help defray the cost of educating the handicapped.

In 1927, the California Legislature enacted laws allowing reimbursement to school districts for the excess

costs of educating the handicapped. From the beginning, school districts had not seen education of such children as their duty; the districts had tended to think of it as a state responsibility, to be shouldered by themselves only with state financing. As the state began to identify and provide services to more educationally handicapped children, the County Offices of Education became the prime coordinator of such programs; a fact which is still evident today. The 1927 laws provided that governing boards might offer education suitable to the needs of the blind, deaf, hard of hearing, crippled, and such other physically handicapped individuals as the superintendent of public instruction might designate. The cost to local districts would be reimbursed by half the actual excess expense, not to exceed $100 per unit of average daily attendance (State of California, Assembly 1965, 14).

During the next twenty years only minor changes were made in financing the various programs for handicapped students. Two of the changes were increasing excess cost to the total amount spent for remedial and individual instruction of physically handicapped pupils, and designating a minimum day of attendance as 240 minutes.

By 1940, the Education Code contained authorization for the establishment of special education programs for all types of physically handicapped pupils and for the mentally retarded, and additionally, the state of California was

reimbursing local districts for part of the excess costs; however, relatively few school districts established classes for the handicapped.

At the same time, private agencies interested in the handicapped began to champion the cause of better education for California's youth, whether handicapped or not. With education costs rising, school administrators were reluctant to establish new and expensive school programs and contended that greater state subsidies were the answer to education for the exceptional.

Interested lay groups persisted in their efforts until 1945, when the California Senate appointed an interim committee to study mental deficiency. In this same year a new group of physically impaired children were brought into the school program, namely, the cerebral palsied. Not only were excess costs reimbursed to school districts for the education of the cerebral palsied, but residential schools were also established (State of California, Assembly 1965, 15).

In 1947, the California State Department of Education established the Bureau of Special Education. This bureau together with more laws began to accomplish the following: made it mandatory for school districts to provide or contract for educational facilities for physically handicapped children, increased the reimbursement for excess expenses in educating the physically handicapped,

established County School Service Funds to provide for the physically handicapped who otherwise would not receive an education, made it permissible for physically handicapped children to enter special day classes at age three, and finally, made it mandatory for schools to establish and maintain special training classes for mentally retarded minors.

Moreover, funds were made available to reimburse districts for up to 75 percent of excess costs for educating the mentally retarded. A quarter of a million dollars was also provided to assist local schools and districts to construct special classes for the cerebral palsied. A special appropriation was made for San Francisco State College to develop a teacher education program in all fields of exceptionality.

Mandatory Programs

The enactment of the mandatory laws created additional problems for public school administrators, whose responsibilities were already being increased by a tremendous growth in school enrollment due to the population influx, but the added state support for the education of the handicapped was of considerable assistance. Special class programs for both physically and mentally handicapped students began to show a decided increase. State excess cost reimbursements for special programs operating during

the 1947-48 school year rose to new heights and reflected an increase in the number of handicapped pupils being served.

The four years between 1947 and 1951 showed even greater activity in special education. Thousands of mentally and physically handicapped pupils were provided for, and the amount of state funds expended for the program doubled.

The period from 1953 to 1963 brought additional expansion of special education programs, and increased state reimbursement. In 1963, a major change in California's system of special education came when the legislature authorized school districts to establish programs for the educationally handicapped. These programs were originally intended for students who were at least two years behind their school work and for students with severe behavioral problems, but were later expanded to include children with severe emotional disturbances (California Legislative Analyst 1968, 10).

The range of programs existing by 1965 was described as follows: regular day classes and remedial classes. Both types were specially reimbursable. For more specialized services, there were resource classes, special day classes, separate public schools, individual instruction at home or in a hospital, schools and/or classes in institutions or sanitariums, and residential schools. The state also eventually enumerated fifteen special groups to be served by

the programs listed above: trainable retarded, educable retarded, blind, partially sighted, deaf, hard of hearing, speech defective, aphasic, cerebral palsied, orthopedically handicapped, those with lowered organic vitality, those with other illnesses and physical conditions, educationally handicapped, gifted, and culturally disadvantaged (State of California, Assembly 1965, 18).

In 1965, the legislature authorized county superintendents of schools to establish Development Centers for Handicapped Minors as continuing programs. These centers were designed for severely mentally retarded, physically handicapped, and multihandicapped children who, without such programs, would have been either institutionalized or without educational programs altogether. A principal purpose of such programs was to relieve parents from the constant care of such children so that they could seek employment (State of California, Department of Finance 1977, 2).

Part 30 of the Education Code was rewritten in 1980, primarily by Senate Bill 1870 (Rodda) (Chapter 797), and became law on July 28, 1980. This legislation repealed all former special education categorical programs and the Master Plan for Special Education program Education Code sections that were in effect on January 1, 1980. The legislation also restructured and added code sections implementing the Master Plan for Special Education statewide. Since the

passage of S.B. 1870, eighty-three legislative measures have modified California's special education statutes.

Paul Hinkle, special education consultant for the Special Education Division of the California Department of Education, has published sixteen consecutive issues of California Special Education Programs: A Composite of Laws. Each year Education Code-Part 30 is revised with new laws enacted since the previous printed year. Additionally, this publication has grown to include other special education-related laws, e.g., the California Code of Regulations, Title 5, and Special Education pertinent references in the Health and Safety and Welfare and Institutions Codes. Since the passage of S.B. 1870, eighty-three legislative measures have modified California's special education statutes (Hinkle 1994, iii).

CHAPTER III

REVIEW OF THE LEGAL LITERATURE

A computerized legal search was conducted using WESTLAW-BASIC services. Queries were formulated using Title 20 of the U.S. Code, sec. 1400, the Education for All Handicapped Children Act (EAHCA), and the following were the specific locator terms: "related services," "medical services," and "hospitalization." The queries with the indicators listed above were computer searched in the ALLFEDS database, or the combined federal cases, including cases from the U.S. Supreme Court, the U.S. courts of appeal, and U.S. district courts dealing with these parameters. The resulting citation listing provided thirty-seven cases that had relevant or parallel issues regarding hospital placement as necessary related services to provide special education (see Table 1). The time span covered in the ALLFEDS search provided cases from 1978 to 1987. Subsequent review of federal case law after 1987 has provided additional cases that have relevant or parallel issues and are as recent as the early 1990s.

A similar search was done using WESTLAW-BASIC computer services with queries for California Supreme Court and courts of appeal case law. The resultant citations

Table 1. ALLFEDS Citations from Computerized Legal Search (WESTLAW-BASIC) Locator Terms: Related Services, Medical Services, and Hospitalization

Citations
1. U.S. 1984. Irving Independent School Dist. v. Tatro, 104 S.Ct. 3371.
2. U.S.N.Y. 1982. Board of Educ. of Hendrick Hudson Central School Dist. Bd. of Westchester County v. Rowley, 102 S.Ct. 3034.
3. C.A.Ill. 1985. Parks v. Pavkovic, 753 F.2d 1397.
4. C.A.D.C. 1984. Lunceford v. District of Columbia Bd. of Educ., 745 F.2d 1577.
5. C.A.Pa. 1981. Takarcik v. Forest Hills School Dist., 665 F.2d 443.
6. C.A.Del. 1981. Kruelle v. New Castle County School Dist., 642 F.2d 687.
7. C.A.Tex. 1980. Tatro v. State of Texas, 625 F.2d 557.
8. C.A.N.Y. 1980. Rowley v. Board of Ed. of Hendrick Hudson Central School Dist., 632 F.2d 945.
9. C.A.Pa. 1980. Battle v. Com. of Pa., 629 F.2d 269.
10. S.D.Ohio 1987. McNair v. Cardimone, 676 F.Supp. 1361.
11. D.D.N.Y. 1987. Vander Malle v. Ambach, 667 F.Supp. 1015.
12. W.D.Pa. 1987. Bevin H. by Michael H. v. Wright, 666 F.Supp. 71.
13. W.D.N.Y. 1987. Antkowiak by Antkowiak v. Ambach, 653 F.Supp. 1405.
14. D.Mass. 1987. Doe v. Anrig, 651 F.Supp. 424.
15. W.D.N.Y. 1986. Antkowiak by Antkowiak v. Ambach, 638 F.Supp. 1564.
16. N.D.N.Y. 1986. Detsel by Detsel v. Board of Educ. of Auburn Enlarged City School Dist., 637 F.Supp. 1022.

Table 1 (continued)

Citations
17. D.C.N.Y. 1985. Antkowiak by Antkowiak v. Ambach, 621 F.Supp. 975.
18. D.C.Mass. 1985. Com. of Mass. v. Heckler, 616 F.Supp. 687.
19. D.C.Tenn. 1985. Seals v. Loftis, 614 F.Supp. 302.
20. D.C.Ill. 1984. Max M. v. Thompson, 592 F.Supp. 1437.
21. D.C.N.J. 1983. T.G. on Behalf of D.G. v. Board of Educ. of Piscataway, N.J., 576 F.Supp. 420.
22. D.C.Ill. 1983. Darlene L. v. Illinois State Bd. of Educ., 568 F.Supp. 1340.
23. D.C.D.C. 1983. McKenzie v. Jefferson, 566 F.Supp. 404.
24. D.C.Mo. 1983. Yaris v. Special School Dist. of St. Louis County, 558 F.Supp. 545.
25. D.C.Tex. 1982. Stacey G. by William and Jane G. v. Pasadena Independent School Dist., 547 F.Supp. 61.
26. D.C.Cal. 1982. Christopher T. v. San Francisco Unif. School Dist., 553 F.Supp. 1107.
27. D.C.Ill. 1982. William S. v. Gill, 536 F.Supp. 505.
28. D.C.Ill. 1980. Gary B. v. Cronin, 542 F.Supp. 102.
29. D.C.Ill. 1982. Parks v. Pavkovic, 536 F.Supp. 296.
30. D.C.Tex. 1982. Ruth Anne M. v. Alvin Independent School Dist., 532 F.Supp. 460.
31. D.C.Tex. 1981. Gladys J. v. Pearland Independent School Dist., 520 F.Supp. 869.
32. D.C.Tex. 1981. Tatro v. State of Tex., 516 F.Supp. 968.
33. D.C.Conn. 1981. Papacoda v. State of Connecticut, 528 F.Supp. 68.

Table 1 (continued)

Citations
34. D.C.Colo. 1981. Association for Retarded Citizens in Colorado v. Frazier, 517 F.Supp. 105.
35. D.C.Va. 1981. Pinkerton v. Moye, 509 F.Supp. 107.
36. D.C.Tex. 1979. Tatro v. State of Tex., 481 F.Supp. 1224.
37. D.C.N.Y. 1978. Lora v. Board of Ed. of City of New York, 456 F.Supp. 1211.

listed twenty-six California cases which mentioned or dealt with special education-related services and hospitalization as a special education placement (see Table 2). The time frame for the California study provided related case law from 1967 to 1987. Additional research of California case law revealed cases which have parallel issues.

In the case at hand, Michelle S., the primary issue to be resolved was whether Michelle's hospitalization at Kings View Hospital constituted a "residential placement" or a "related service" which her local school district was required to pay for under the EAHCA or whether the placement constituted "medical services" excluded from the purview of the EAHCA (Clovis Unified School District v. California Office of Administrative Hearings 1990, 4811).

Residential Placement

The EAHCA indirectly requires school districts to provide residential placements by defining elementary and secondary schools to include "residential schools" (EAHCA 1980, sec. 1401 (a) (9-10)). There is no further explanation in the EAHCA, but the pertinent regulations provide that

> if placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost to the parents of the child (34 C.F.R., sec. 300.302).

Table 2. California Case Law Citations from Computerized Legal Search (WESTLAW-BASIC) Locator Terms: Special Education, Related Services, and Hospitalization Placement

Citations
1. Cal.App. 3 Dist. 1987. White v. State, 240 Cal.Rptr. 732.
2. Cal.App. 1 Dist. 1986. Fisher v. Superior Court (Alpha Therapeutic Corp.), 223 Cal.Rptr. 203.
3. Cal.App. 1 Dist. 1985. Planned Parenthood Affiliates of California v. Swoap, 219 Cal.Rptr. 664.
4. Cal. 1985. State Personnel Bd. v. Fair Employment and Housing Com'n (Amon), 217 Cal.Rptr. 16.
5. Cal.App. 1 Dist. 1985. In re John K., 216 Cal.Rptr. 557.
6. Cal.App. 1 Dist. 1985. Davey Tree Surgery Co. v. Occupational Safety and Health Appeals Bd. (Div. of Occupational Safety and Health), 213 Cal.Rptr. 806.
7. Cal.App. 1 Dist. 1984. Keech v. Berkeley Unified School Dist., 204 Cal.Rptr. 7.
8. Cal.App. 4 Dist. 1984. Byrnes v. Riles (Capistrano Unified School Dist.), 204 Cal.Rptr. 100.
9. Cal.App. 3 Dist. 1983. Nevada County Office of Educ. v. Superintendent of Public Instruction, 197 Cal.Rptr. 152.
10. Cal.App. 1982. Erzinger v. Regents of University of California, 187 Cal.Rptr. 164.
11. Cal. 1982. Serrano v. Unruh, 186 Cal.Rptr. 754.
12. Cal. 1982. American Nat. Ins. Co. v. Fair Employment and Housing Com'n, 186 Cal.Rptr. 345.
13. Cal.App. 1982. Erzinger v. Regents of University of California, 185 Cal.Rptr. 791.
14. Cal.App. 1982. Newport-Mesa Unified School Dist. of Orange County v. Hubert, 183 Cal.Rptr. 334.

Table 2 (continued)

Citations
15. Cal.App. 1982. San Francisco Unified School Dist. v. State, 182 Cal.Rptr. 525.
16. Cal.App. 1981. American Nat. Ins. Co. v. State of Cal. Fair Employment Practice Commission, 170 Cal.Rptr. 887.
17. Cal. 1973. Guerrero v. Carleson, 109 Cal.Rptr. 201.
18. Cal. 1967. Morris v. Williams, 63 Cal.Rptr. 689.
19. Cal.App. 2 Dist. 1988. Salazar v. Honig, 246 Cal.Rptr. 837.
20. Cal.App. 1 Dist. 1985. In re John K., 216 Cal.Rptr. 557.
21. Cal.App. 4 Dist. 1984. Byrnes v. Riles (Capistrano Unified School Dist.), 204 Cal.Rptr. 100.
22. Cal.App. 3 Dist. 1983. Nevada County Office of Educ. v. Superintendent of Public Instruction, 197 Cal.Rptr. 152.
23. Cal.App. 1982. San Francisco Unified School Dist. v. State, 182 Cal.Rptr. 585.
24. Cal. 1971. Serrano v. Priest, 96 Cal.Rptr. 601.
25. Cal. 1966. Manjares v. Newton, 49 Cal.Rptr. 805.
26. Ca. 1924. Piper v. Big Pine School Dist. of Inyo County, 193 Cal. 664.

Medical Services

The EAHCA contains no explicit definition of "medical services." In the definition of related services stated earlier, medical services and counseling are included, with the stated exception "that such medical services shall be for diagnostic and evaluation purposes only" (EAHCA 1980, sec. 1401 (a) (17)). Such services are supportive services as may be required to assist a handicapped child to benefit from special education, and include the early identification and assessment of handicapped conditions in children.

The cases that follow are on point regarding the issues and/or questions posed by the Clovis Unified case.

A District of Columbia public school system appealed an order to pay for a profoundly schizophrenic child's medical expenses during her stay at a private psychiatric hospital. The mother had asked for special education placement in the private hospital. Treatment involved intensive psychotherapy and a drug program. A U.S. district court held that the district did not have to subsidize medical expenses. The court found the placement was medical treatment for her condition and not for rendering educable. The placement was treatment (McKenzie v. Jefferson 1983, 404).

The parents of a profoundly retarded thirteen-year-old sought a residential placement as opposed to a six-hour-

a-day program proposed by a Delaware school district. An administrative hearing officer ruled for the district, and the parents' appeal was heard by a U.S. district court, which was moved by testimony that the child needed consistent full-time residential care in order to stop the child from experiencing stress and self-destructive behavior, including continuous vomiting. The district court's ruling of inadequate program was affirmed by the U.S. Court of Appeals, Third Circuit (Kruelle v. New Castle County School District 1981, 687).

The parents of a severely retarded Massachusetts child challenged a district on their placement of their child in a day school training program; the parents wanted day school and a residential placement. The Massachusetts Special Education Appeals Board found for the district's recommended placement. The board agreed that a residential placement was needed but that the child's need for residential placement was not educationally founded. The U.S. Court of Appeals, First Circuit, disagreed. The court concluded that without a residential placement the child not only would not make educational progress, but might also regress. In this case, the court ruled that if a public or private residential placement including nonmedical care and room and board was necessary in order to provide educational services, such services must be provided at no cost to the parents (Abrahamson v. Hershman 1983, 223).

In North v. District of Columbia Board of Education, a U.S. district court held that where a sixteen-year-old multiple handicapped child's problems were so intertwined that no single problem could be considered primary, the school district of the child's residence was responsible for providing a full-time residential educational program for him.

The facts of this case are as follows. The child, who was epileptic, emotionally disturbed, and learning disabled, was placed in a private residential treatment facility in Pennsylvania. Six months later, the facility concluded it could no longer deal with the severity of the boy's emotional and other problems. The district offered no alternative placement. The parents refused twice to accept the child back in their home, and he was left at the office of the Department of Human Resources, which referred him to a public hospital.

Neglect proceedings were initiated against the parents, who then sought an injunction to compel the district to place the boy in a residential program with appropriate psychiatric and other services. The district offered an educational day program and left the help for the emotional problems to the parents and/or the Department of Human Resources. Both the parents and the Department of Human Resources disclaimed responsibility.

The district court held the district liable for the child's residential care expenses for two reasons. First, the EAHCA puts primary responsibility for education with the state educational agency. Second, the district court would not exacerbate the family relationship with the neglect proceedings. The district court declined to attempt to separate the child's social, emotional, medical, and educational problems in order to identify a primary problem and affix responsibility to the agency operating in that area. Consequently, the use of federal educational laws and placement pursuant to those laws was the only legally available alternative (North v. District of Columbia Board of Education 1979, 136).

In an Illinois case, parents of a handicapped child appealed a "responsible relative" assessment of $100 per month for their son's private residence placement. Before their appeal could be resolved, their son was given notice of discharge and the parents filed suit in the U.S. district court. The court held that "if the press of time makes exhaustion of administrative remedies impractical, it is not required by the EAHCA" (Parks v. Pavkovic 1985, 1397). Eventually, the appellate court ruled for the parents, observing that federal law assures all handicapped children the right to a free appropriate public education, and further, there is a federal law insistence that all expenses

be borne by the state educational agency (Parks v. Pavkovic 1985, 1397).

In a 1983 Illinois case, a U.S. district court ruled that state agencies were not required to pay the expenses of a child with severe behavioral disorders at a psychiatric hospital. The parents brought suit against the Illinois State Board of Education to compel it to pay the costs of their child's placement at a private residential psychiatric facility. The parents argued that the services were "psychological services," which are included in the definition of related services under the EAHCA. The court rejected this argument, saying that the board had properly deemed the services psychiatric rather than psychological, since they were provided by licensed physicians. Further, under the EAHCA, all medical services except those provided for evaluative and diagnostic purposes are specifically excluded from "related services" (Darlene L. v. Illinois State Board of Education 1983, 1348).

In a related case, a New Jersey U.S. district court ruled that a district was required to pay $25,200 for a child's stay at a day school that provided individualized psychotherapy, family therapy, group therapy, and individual and group counseling. The court held that the psychotherapy was an integral part of the child's special education because the psychological services were performed by social

workers, school psychologists, nurses, or counselors (T.G. v. Board of Education 1983, 420).

In 1981, two emotionally disturbed children and their parents filed a motion before the U.S. District Court, N.D. of California, for a summary judgment against the San Francisco Unified School District (SFUSD) to compel the school district to provide funding for residential placement as ordered by a state hearing officer.

The district had never informed the parents of their EHA rights for due process, including the fact that under the EAHCA, the district would be responsible for providing such funding. The San Francisco Department of Social Services (DSS), through juvenile court dependency proceedings, had provided residential placement for both Christopher T. and his brother, as advised by the SFUSD. The district contended that the DSS placements were for social and behavioral problems, and not educational.

The court found that both brothers required residential placement in order to benefit from special education, based on reports and recommendations of psychologists and psychiatrists before the court. The court ordered the SFUSD to assume the cost of residential placement for both brothers. Further, the court ordered the SFUSD to convene new Individual Educational Plans (IEPs) for both brothers containing residential placement. The DSS and the parents were also to be reimbursed for any costs of care

for their children incurred by them as a result of the SFUSD's failure to pay for their residential placement (Christopher T. v. San Francisco Unified School District 1982, 1107).

The Commonwealth of Massachusetts sought a summary judgment in the U.S. District Court, D. Massachusetts, against U.S. Secretary of Health and Human Services Margaret Heckler because the Health Care Financing Administration held that certain services provided to persons residing in state-owned intermediate care facilities for the mentally retarded were not eligible for reimbursement under Medicaid.

The district court held that the training being provided to the individuals came within the category of habilitative services for which the state was entitled to reimbursement, even though the training was being provided by the Commonwealth's Department of Education and Medicaid does not reimburse the cost of educational activities.

The court concluded that the simple skills being taught to the institutionalized individuals were not educational (academic, i.e., reading, writing, math) in the traditional sense of the word. Additionally, this case affirmed the use of joint plans of care that included both Individual Service Plans (ISPs) and IEPs. ISPs were Massachusetts' habilitative training services and IEPs are EAHCA provisions to provide special education and related services (Commonwealth of Massachusetts v. Heckler 1985, 687).

A parental placement of a deaf child in a private school in Ohio in 1986 led the parents to challenge the refusal of the state and district to provide free transportation to and from the school. The U.S. district court made two important decisions in this case. First, if transportation is needed for a handicapped child to participate in special education, the state is required to provide transportation, even though the services are not required by the nature of the handicap. Second, the state is not required by statute to assume costs of private education for a handicapped child or costs of services related to that private education, which has been selected by the parents for the child for their own personal reasons, if the state has fulfilled its obligation by making its own free appropriate public education and related services available to the handicapped child (James McNair v. Cardimone 1987, 1361).

The Western District of Pennsylvania U.S. District Court supported a school district that refused to provide a full-time nurse for a multiple handicapped child in order for her to attend school. The seven-year-old child suffered multiple handicaps, principally Rabinow syndrome (fetal face syndrome), severe bronchopulmonary dysplasia, profound mental retardation, spastic quadriplegia, seizure disorder, and hydrocephalus. She was also legally blind. She breathed through a tracheostomy tube and was fed and

medicated through a gastrostomy tube. The Pittsburgh School District admitted the girl to a special education program with the stipulation that the child's parents bear the cost of the nursing services and equipment the student needed. The cost of such intensive nursing services was about $1,850 per month; the parents' insurance coverage ceiling was $500,000 and was soon threatened with depletion. The parents' request that the school district assume the expenses of the nurse who was taking care of the student at school, and the district's refusal prompted the institution of administrative due process that led to the district court's decision.

The court rejected the student's claim that the nursing services were not medical, that is, performed by a physician. Instead, the court ruled that the nursing services required were so varied, intensive, and costly that they were more in the nature of medical services than those included as related services under the EAHCA (Bevin H. v. Wright 1987, 71).

A Virginia case focused on a parental demand for a "self-contained" program for a learning disabled child. The county school board was ordered to pay for alternative transportation for the child to attend a "self-contained" program in a school thirty minutes or more by bus beyond her regular school of attendance. This order was considerably

less than the mother's request to establish a totally new "self-contained" classroom at her home school.

While the EAHCA intrudes somewhat into the state's traditional decision-making role in the education of the handicapped, the act was not intended to totally supplant the state's prerogative in allocating its financial resources. Educational funding is not unlimited. Balancing the competing interests of the undeniably important personal needs of the handicapped child and the realities of limited funding and the necessity of assisting in the education of all handicapped children rests as a responsibility with administrators in the public schools. A standard of reasonable accommodation has been recognized; the standard lies somewhere between the best possible education a school could provide if it had unlimited funds and access to the regular classroom without special assistance (Pinkerton v. Moye 1981, 107).

The Harvard Law Review explained the reimbursement calculations for educating a handicapped child and the problems created as follows. The states (districts) receive a fixed dollar amount for each handicapped student irrespective of needs. Localities therefore have an incentive to identify handicapped children but not to place them in an expensive program. A school system may receive no more federal money for a child placed in a $20,000 per year residential program than it does for a child who

requires $200 worth of special reading instruction in the regular public school (92 Harv. L.Rev. 1979, 1103, 1109-1110).

After the EAHCA was passed and implemented in 1975, the judiciary has heard many cases in the state courts, U.S. district courts, and U.S. courts of appeal, as well as at the U.S. Supreme Court level. Two of those cases have become landmark cases, in that the Supreme Court decisions became the basis for clarification and interpretation of the intent of Congress in many disputed individual handicapped education issues.

The Board of Education v. Rowley decision has served as a primary citation since the Supreme Court announced its holdings in 1982. The Supreme Court established the following standard for evaluating the appropriateness of a handicapped child's education: the child's program must be reasonably calculated to allow the child educational benefits. The Supreme Court also acknowledged in Rowley that the EAHCA was enacted in response to a congressional concern that millions of handicapped pupils were being denied a public education, thereby denying them admittance to public schools or by failure to provide the handicapped pupils with specialized instruction and related services once they were admitted. The court made it clear that the primary purpose of the EAHCA was to provide access to education.

In this instance, the parents of an eight-year-old child, deaf since birth, claimed that the child was entitled to have a sign language interpreter in her first-grade classroom to enable her to have the same educational opportunity as her classmates. The Supreme Court found in the record that the child, an excellent lip reader, was already provided a special FM electronic hearing aid, that the child was remarkably well adjusted with her classmates and teacher, and that she was doing average to above average academic work. The parents argued that the interpreter was needed to allow her to reach her maximum potential, which would have been in addition to instruction from a tutor for the deaf one hour each day and from a speech therapist for three hours each week. When the school district denied their request, the parents sought a hearing. The hearing officer ruled for the district, as did the New York commissioner of education.

Pursuant to the provisions of the EAHCA, the parents sought judicial review in the U.S. District Court for the Southern District of New York, claiming the school district was, in essence, denying a free appropriate public education guaranteed by the EAHCA. The district court found that the child was doing well, but not learning as much, or performing as well academically, as she would without her handicap. This disparity between the child's achievement and her potential led the court to decide she was not

receiving a free appropriate public education. The court defined free appropriate as an opportunity to achieve her full potential commensurate with the opportunity provided to other children. The school district's appeal to the U.S. Court of Appeals for the Second Circuit affirmed the U.S. district court's ruling.

The school district made a final appeal to the U.S. Supreme Court, which reversed the two lower courts' decisions. The Supreme Court held that the EAHCA is satisfied when a school provides personalized instruction with sufficient support services to permit the handicapped child to benefit educationally. The court also stated that the IEP should be reasonably calculated to allow the child to achieve passing marks and matriculate from grade to grade. The court stated that the EHA did not require a school to provide a sign language interpreter; it further stated that the EHA is not meant to guarantee a certain level of education, but merely to open the door of educational access to handicapped children by means of special education services. The court concluded that the EHA is not required to maximize the potential of each handicapped child nor provide handicapped children equal opportunity commensurate with educational opportunities of nonhandicapped children (Board of Education v. Rowley 1982, 176).

Where the Rowley decision produced guidelines to provide access to education for many handicapped children, the Tatro decision provided four criteria to determine a school's obligation to provide services that relate to both the health and education of a handicapped child.

Amber Tatro was a three-and-one-half-year-old child with "spina bifida," a birth defect which created orthopedic and speech impairments and a neurogenic bladder condition that prevented her from being able to empty her bladder voluntarily. This latter condition required Clean Intermittent Catheterization (CIC) to be performed every three or four hours each day to prevent chronic kidney infection. Because of Amber's young age, she could not perform this service for herself.

The Irving Independent School District in Texas decided that were Amber to attend its early childhood development program, the school would not provide catheterization to Amber during her school day. Amber's IEP provided for physical and speech therapy, but failed to specify that CIC be administered during the school day as a "related service." This decision effectively prohibited Amber from attending the early childhood program.

Amber's parents brought an action before the U.S. district court for injunctive relief and monetary damages. They sued the State of Texas, the State Board of Education, the Texas Education Agency, the board of trustees for the

Irving Independent School District, and the district superintendent. Their suit alleged that the provision of catheterization was required by P.L. 94-142, the Rehabilitation Act of 1973, 29 U.S.C. 5701 et seq., and the school district's stated policy on treatment of students by school personnel.

The district court upheld the school district and ruled that catheterization is a medical, not a related service. On the parents' appeal to the U.S. Court of Appeals for the Fifth District, the decision was reversed. The court of appeals held that CIC is a related service under the EHA, that the related services qualify as "supportive services" required to assist a handicapped child to benefit from special education, and that the supportive services are no less related to the effort to educate the child than are services that enable a child to reach, enter, or exit a school.

In July 1984, the U.S. Supreme Court ruled on the Irving Independent School District appeal and affirmed the court of appeals' holdings. The Supreme Court stated that CIC was a "related service" under the EHA, as without it, Amber would not be able to attend school at all (Irving Independent School District v. Tatro 1984, 3371).

The court listed four criteria to determine a school's obligation to provide services that relate to both the health and education of a child. First, the child must

be handicapped so as to require special education; the child is then entitled to related services. Second, only those services necessary to aid a handicapped child to benefit from special education must be provided. Third, EHA regulations state that school nursing services must be performed by a nurse or other qualified person, not by a physician. Fourth, only services can be provided, not the equipment required to perform those services.

Both the Rowley and Tatro decisions and the other pertinent cases reviewed in this chapter serve as a foundation for the analysis of the findings of the U.S. Court of Appeals for the Ninth Circuit regarding Clovis Unified's claim that Michelle S.'s placement in an acute psychiatric care hospital, as a related service, was not what Congress intended in the EHA as an appropriate special education placement.

A girl, Katherine D., was in private school in Hawaii; she suffered from cystic fibrosis and tracheomalacia. Her mother attended to her in the private school to provide suctioning and clearing processes. The Hawaiian Department of Education certified Katherine D. as eligible for special education services.

The girl's school district proposed a homebound program because of the unavailability in the public schools of medical services that the girl required. The parents

rejected the IEP and continued in the private educational setting.

The following year, the district proposed a public school program conducted by staff members the district would train to meet the child's medical needs. The parents also rejected this proposal, continued private school education, and brought suit to compel the district to pay for both years of private education. A U.S. district court in Hawaii held in favor of the parents, and the school district appealed.

The U.S. Court of Appeals, Ninth Circuit, held that the homebound program was inappropriate and, because the district was unable to offer an appropriate public school program, the district was required to pay the private education costs for the first year. However, the alternative program conducted by trained district staff members was ruled appropriate; thus, the parents were not entitled to tuition reimbursement for the second year (Katherine D. v. Hawaii Department of Education 1983, 809).

Parents or guardians of disabled children who unilaterally change the placement of their child during any review proceedings often seek reimbursement from their school district for private school tuition expenses. A Massachusetts case ruled upon by the U.S. Supreme Court stated that parents who violate the "status quo" provisions may nevertheless receive private tuition reimbursement from

the school district if the IEP proposed by the district is later found to be inappropriate. However, if the proposed IEP is found to be appropriate, the parents will not be entitled to reimbursement for expenses incurred in unilaterally changing their child's placement.

The Supreme Court also observed that to bar reimbursement claims under all circumstances of unilateral placement would violate the EAHCA, which favors proper interim placements for handicapped children. Further, the court stated that parents should not be forced neither to leave their child in what might be found later to be an inappropriate educational placement, nor to obtain an appropriate placement only by sacrificing any claim for reimbursement. Finally, the court said their decision did have an impact on parents, that is, parents who unilaterally change placement during the pendency of proceedings do so at their own financial risk (Burlington School Committee v. Department of Education of Massachusetts 1985, 1996).

In a 1982 New York case, an emotionally disturbed twenty-year-old was educationally placed in a state-approved health care facility. When the state decertified the institution, giving it a hospital descriptor instead of a school descriptor, the twenty-year-old stayed for some time after the state declared it was no longer obligated to pay the $185 per day cost for the youth's maintenance because the institution was now a hospital, not a school.

The parents sued for costs until an alternative placement could be determined. The district court ruled that the state was obligated to continue to pay. Both sides used the "status quo" argument, and the state appealed. The U.S. Court of Appeals, Second Circuit, affirmed the district court's decision by ruling that the state could not disclaim its statutory obligation by decertifying an institution. A free appropriate public education in a suitable institution remains the responsibility of the state (Vander Malle v. Ambach 1982, 49).

A 1988 California case illustrated that when residential placement is necessary to provide a handicapped child with a free appropriate public education, then residential placement is a "related service" under the EHA. In this instance, a child suffered with mental retardation and infantile autism. The Regional Center for the East Bay (RCEB), a nonprofit community agency operating under the Welfare and Institutions Code, provided services to the child by placing him in a licensed community care facility, the Behavior Research Institute of California (BRI). A local school paid the student's educational costs.

When the child's self-abusive behavior became severe, the RCEB terminated funding and placement at the BRI. The parents sought a temporary restraining order and then a preliminary injunction to stop the change in placement. Since there was no evidence that the placement

at the BRI was for educational reasons, the U.S. district court ruled that the RCEB was not subject to EHA "status quo" standards, and the parents' suit was declined.

Subsequent reconsideration by the same court vacated its previous denial, and the parents prevailed, because the IEP team and the RCEB jointly recommended placement at the BRI in order to provide the student with a free appropriate public education (Corbett v. Regional Center for the East Bay 1988, 230).

An Illinois school district was sued by the parents of a high school freshman who had been placed in a special education program. The district's Department of Special Education recommended outside extensive psychotherapy. An IEP that did not include psychotherapy was developed without parental participation. The student's condition worsened; however, the school district later issued the student a diploma.

The parents' suit sought revocation of the diploma, remedial education in a private residential facility, reimbursement for costs in providing services to their child under his independently prepared IEP, and $1 million in general damages for alleged violations of the EHA. The U.S. district court ruled against the parents, citing Illinois law which required that the state provide tuition-free education but did not stipulate that the state was required to provide psychotherapy. The court held further that

general monetary damages were not available under the EHA. The revocation of the diploma was also denied since it made no sense to revoke the diploma if the state was not required to provide the educational placement the parents sought (Max M. v. Thompson 1983, 1330).

Hospital care has been understood by Congress and the secretary of education to be a far more expensive proposition than is educational residential placement, and a greater burden than the states could ordinarily be expected to shoulder in their budgets for education.

The fact that Congress failed to include hospitalization explicitly as a related service or placement under the EAHCA is supported by the U.S. Supreme Court in its writings in Pennhurst State School v. Halderman: "If Congress intends to impose a condition on the grant of federal monies, it must do so unambiguously" (Pennhurst State School v. Halderman 1982, 17).

In a Massachusetts case, a U.S. district court ruled that it (the court) was not free to substitute its own standards for educational programs for those of the state when they held that a school district was not financially responsible for placement in a psychiatric hospital, as the institution was not a state-approved special education facility (Doe v. Anrig 1987, 430).

In two other cases, the courts ordered school districts to pay for residential placements that provided

integrated programs of educational and other supportive services and fell under the purview of the EAHCA (Clevenger v. Oak Ridge School Board 1984, 514; Jefferson County Board of Education v. Breen 1988, 853-57). In the Breen case, the court expressly refused to place a child in a psychiatric hospital.

CHAPTER IV

ANALYSIS, CONCLUSIONS, AND RECOMMENDATIONS

In 1989, Zirkel found that the spurt of litigation in the 1970s, after the implementation of P.L. 94-142, was beginning to slow down, with the marked exception of special education. He found that a conservative judiciary was slowly closing the door on plaintiffs--the students, the parents, the staff, and other citizens who sue school districts. Additionally, Zirkel pointed out that more than 55 percent of the U.S. Supreme Court's K-12 education decisions during the current decade (the 1980s) had favored school authorities, up from only 30 percent during the 1970s. He stated, "If the '70s were the heyday for people suing the schools, then, the '80s are shaping up as the nay-days--with the exception, that is, of special education" (Zirkel 1989, 21).

In the case study chosen as the focal point of the current study--Clovis Unified School District (Plaintiff) v. California Office of Administrative Hearings, California State Superintendent of Public Instruction, and California Department of Education (Defendants), Michelle S., Real Party in Interest--the school district and the child's parents appealed a U.S. district court judgment. The appeal

was submitted to the U.S. Court of Appeals for the Ninth Circuit in San Francisco. The district appealed for a new trial and amended findings of fact and conclusion at the U.S. district court level. The parents of Michelle S. fought the state of California defendants, seeking the overturning of the Office of Administrative Hearings' rulings and for an extended placement. Further, the parents also sought attorney's fees.

Analysis

The Clovis Unified School District contended the district court's ruling exceeded the requirements of the EAHCA by requiring a public education agency to pay for medical costs. The district argued, further, that the district court ignored pertinent state policies, procedures, and laws that the state had developed to ensure a free appropriate education for all handicapped pupils within its jurisdiction, and that the rulings placed an unwarranted obligation on the state or school that Congress could not have intended.

Educational Funding

The EAHCA of 1975 is an educational funding statute enacted pursuant to Congress's spending powers and is designed to assist state and local educational agencies in regulating education for handicapped children. To qualify for federal assistance for special education programs, a

state must have in effect a policy that assures all handicapped children of receiving a "free appropriate education." The state must adopt policies and procedures that assure all children of receiving an appropriate education, regardless of the severity of their handicap.

The EAHCA was enacted in response to congressional concern that millions of handicapped children were being denied a public education, either by denying them admittance to public schools or by failure to provide the handicapped pupils with specialized instruction and related services once they were admitted.

In the Rowley decision, the U.S. Supreme Court explained the act as Congress's providing access or availability for all handicapped children. The court further explained that Congress did not impose on the states any greater substantive educational standard than would be necessary to make such access meaningful. In fact, the court explained that the process of providing special education and related services to handicapped children is not guaranteed to produce any particular outcomes. Thus, the act was meant more to open the door of public education to handicapped children on appropriate terms (related services) than to guarantee any particular level of education, once they were inside.

The state of California had the required policy; it had a state master plan approved by the secretary of

education. The plan contained goals, timetables, and service priorities to meet the needs of the unserved and inadequately served handicapped pupils. The state plan met the numerous procedural requirements of the EAHCA, i.e., Individualized Educational Program (IEP) evaluations, parent notice and consent, and processes for questioning local educational agency decisions through administrative hearings.

Significantly, Congress entrusted the development of the IEP to those with substantive knowledge, that is, a representative of the local educational agency, the teacher, and the parent. The content of the IEP and its implementation were left to the discretion of the educators and parents within the states.

If conflicts or disagreements did occur, Congress designed a dispute resolution procedure, the first step of which was an administrative hearing conducted by an independent hearing officer. The hearing officer was not to be an employee of the state or local educational agency. The hearing officer's decision was to be final unless appealed to a court of competent jurisdiction.

The second step could then include an appeal to a court of competent jurisdiction. On appeal, the court is to review the administrative record, hear additional evidence at the request of a party, and basing its decision on the

preponderance of evidence, grant such relief as it determines appropriate.

According to the Supreme Court Rowley rulings, such a court's inquiry is twofold.

> First has the state complied with the procedures in the EAHCA and secondly, is the IEP developed through the procedures reasonably calculated to enable the child to receive educational benefits. If these requirements are met, the state has complied with the obligations implied by Congress and the courts can require no more (Board of Education v. Rowley 1982, 206-207).

It can be argued that the administrative hearing officer and the U.S. district court failed to recognize the state of California's approved plan and the district's compliance by making Clovis Unified financially responsible for Michelle's placement in a psychiatric hospital. First, state law and policy, which do not authorize hospitalization as a residential placement, are consistent with the EAHCA, which requires only that instruction be provided in hospitals. Clovis Unified was already compensating Kings Canyon Unified for the educational services being provided to Michelle S. while at Kings View Center, an acute care psychiatric hospital.

The district court erred legally in describing the hospitalization incumbent services and costs in such a residential placement by finding the services as "related services" as defined in the EAHCA. By finding that Kings View Center provided both related services and residential care, the district court ended up ordering the district to

pay for medical treatment, not education. In this instance, the district had offered a program, Re-Ed West in Sacramento, which was a state-recognized educational residential school, for approximately $50,000 per year. This program authorized by state law was sufficient to confer educational benefits on Michelle.

The contrast was that a 365-day hospital placement at Kings View Center was going to cost approximately $150,000 per year for medical and pastoral services, not education. Table 3 presents the rate and percentage distributions per day for Michelle's placement at Kings View.

The Kruelle decision contained the need for education in many nonacademic forms, but in general, education for the handicapped child should not be stretched to cover the medical needs of handicapped pupils. Michelle S. had been consistently improving in her special day school education prior to her unilateral placement by her parents in Kings View. The rationale for the Kings View placement was that she was unmanageable at home and periodically at school; Michelle was placed at Kings View for medical reasons, not educational. To include extended psychiatric hospitalization within the related services or special education placement options outlined in the EAHCA strained logic and educational expertise, as well as educational resources. Considering Michelle's age at the time of the

Table 3. Kings View Center, Tioga Ward: Daily Rate and Percentage Distribution Summary for Fiscal Year 1985-86

Services	Percentage Distribution	Dollar Distribution
Direct Services		
Ward Nursing Coverage	29.05	$ 104.58
Nursing Administration	1.02	3.67
Nursing Inservice Training	1.06	3.82
Ancillary Services		
Lab and Radiology	1.21	4.36
Psychological Testing	.28	1.01
Pharmacy	3.10	11.16
Activity Therapy	7.46	26.86
Vocational Rehabilitation	.82	2.95
Therapy--Non/M.D.	9.04	32.55
Support Services		
Discharge Planning	.79	2.84
Dietary	5.05	18.18
Laundry and Linen	.32	1.15
Housekeeping	3.05	10.98
Maintenance and Plant Operations	11.98	43.13
Grounds	1.14	4.10
Medical Records	.94	3.38
Administrative Services		
General Administration	9.91	35.68
Admitting	.99	3.56
Community Information and Education	1.69	6.08
Chaplaincy Services	1.64	5.90
Corporation Service	9.46	34.06
Totals	100.00	360.00
Professional Fees		60.00
Total Dollars		$ 420.00

appeal, ten, and considering her prevailing on her appeal for continued placement until she reached the special education age of majority, twenty-two, the district could have been responsible for nearly $2 million for the cost of this one child's hospital/educational expenses.

Related Services

Related services, by definition, are services that have a connection to a child's special educational needs. Related services are not defined as services to cure or treat a handicapped pupil's disability or illness, but as "such services as may be required to assist a handicapped child to benefit from special education" (Education for All Handicapped Children Act 1980, sec. 1401 (a) (17)).

Congress was careful in its EAHCA definition to specifically exclude "medical and counseling services, except that such medical services shall be for diagnostic and evaluation purposes only" (EAHCA 1980, sec. 1401 (a) (17)). The totality of the EAHCA was educational in nature and in focus. A reading of the entire EAHCA makes it clear that Congress intended to provide education to handicapped pupils, not to solve the social, medical, vocational, housing, or transportation problems that are generally associated with disabled persons.

The terms "education" and "instruction" are defined and used repeatedly throughout the statute to describe the state's responsibilities to handicapped pupils. The term

"medical services" is included only once, as mentioned above, to exclude all medical services except those which are necessary for diagnosis and evaluation.

The legislative history also speaks of "instruction" and "education" and passes over the medical exclusion as though Congress's intent needs no further interpretation. Both the legislative history and the Rowley decision make it clear that in developing the EAHCA, Congress relied heavily upon two right-to-education cases for handicapped pupils: Mills v. Board of Education of the District of Columbia and Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania. Although children in the PARC case were hospitalized, there was no order that schools pay for the hospitalization, but simply that the children be provided access to special education. Congress expected the interpretation of medical services to be relatively straightforward, based on the usual understanding of the distinction between medical treatment and education. The fact that Congress failed to explicitly include hospitalization as a service or placement precludes the imposition of such a burden by the courts.

> The legitimacy of Congress' power to legislate under the spending power thus rests on whether the states voluntarily and knowingly accept the terms of its "contract" with the federal government. Accordingly, if Congress intends to impose a condition on the grant of federal monies, it must do so unambiguously (Pennhurst State School v. Halderman 1982, 17).

Congress had a clear understanding of special education and the related services based on the existing educational programs being provided by most states in 1974. The list of related services provided by Congress in Section 1401 (a) (12) of the EAHCA were services that were already being provided in most states. The problem for Congress was not designing new and unheard of educational interventions, but rather, making the existing programs and services available to all handicapped pupils who had such a need.

The U.S. Supreme Court understood this historical context in which Congress operated when it decided the case of Irving Independent School District v. Tatro. After deciding that intermittent catheterization was a related service that required little, if any, specialized medical knowledge to administer, the Supreme Court concluded that school nurses could perform the catheterization.

> School nurses have long been a part of the educational system, and the Secretary would therefore reasonably conclude that school nursing services are not the sort of burden that Congress intended to exclude as a "medical service." By limiting the "medical services" exclusion to the services of a physician or hospital, both far more expensive, the Secretary has given a permissible construction to the provision (Irving Independent School District v. Tatro 1984, 3378).

Unlike Tatro, the psychiatric hospitalization of Michelle S. was not a long-established part of the educational system. The psychological and psychiatric services provided by Kings View Center differed with the definition of related services found in the EAHCA. Such

services are explicitly included within the related services and have long been a part of the California educational system, i.e., counseling and diagnosing. However, intensive extended treatment in a psychiatric hospital has never been a part of education in California. The treatment provided in such facilities exceeds the expertise of state and local educational agencies and clearly falls within the medical exclusion addressed in Tatro.

Residential Placement Versus Hospitalization

Clovis Unified had, in essence, stipulated that a residential placement was necessary in the case of Michelle S. The district did dispute that a psychiatric hospital was a residential placement. The requirement for residential placement is imposed by the EAHCA without explanation in Section 1401 (a) (9). The legislative history is clear that Congress included room and board within the meaning of a free appropriate education. California included residential placement as an educational expense for handicapped pupils. Paying for the costs of a hospital placement for Michelle S. was disputed because the district believed that residential placement payments arose only when the placement was for the purpose of providing education. The federal regulations supported this belief:

> If placement in a public or private residential program is necessary to provide special education and related services to a handicapped child, the program, including non-medical care and room and board, must be at no cost

> to the parents of the child. C.F.R. comment: This requirement applies to placements which are made by public agencies for educational purposes (Code of Federal Regulations, sec. 300.302).

Handicapped children are placed out of home for a variety of reasons and upon the recommendation of a variety of agencies and professionals. Some are placed in group or foster homes, some are institutionalized, and some are hospitalized upon the recommendation of medical personnel for treatment of mental or physical illness. Others can be placed, by IEP teams, in residential schools/facilities offering intensive programs, when only those programs will enable the handicapped pupil to benefit educationally. It is only this latter placement category that Congress intended under the EAHCA.

In Abrahamson v. Hirshman (1983), the First Circuit Court of Appeals stated:

> This is not to say that the Act requires a local school committee (district) to support a handicapped child in a residential program simply to remedy a poor home setting or to make up for some other deficit not covered by the Act. It is not the responsibility of local officials under the Act to finance foster care as such; other resources must be looked to. In passing the Act, Congress intended to remedy the fact that educational systems often failed to provide programs for handicapped children . . . Congress did not intend to burden local school committees (districts) with providing all social services to all handicapped children (227-28).

Numerous courts have recognized that when faced with the question of appropriate residential placement under the EAHCA, the court is obligated to look at the purpose of such

a placement. In Kruelle, the Third Circuit Court of Appeals made the following statement:

> Analysis must focus, then, on whether full time placement may be considered for educational purposes, or whether the residential placement is a response to medical, social or emotional problems that are segregable from the learning process. One of the early cases actually collapsed the distinction by declaring the impossibility of separating emotional and educational needs in complex cases. However, as later cases demonstrate, the claimed inextricability of medical and educational grounds for certain services does not signal court abdication from decison making in difficult matters (Kruelle v. New Castle County School District 1981, 693).

The cases of Kruelle, North, and Christopher T. speak to the segregable issues in Michelle S.'s case. Each of these cases proposes that when a child's needs are so intertwined as to be inseverable, education cannot be relieved of the obligation by pointing to another need. In Michelle S.'s case, her needs were so intertwined that residential placement was necessary. As to her need for psychiatric hospitalization, the issues are distinguishable. Once Michelle was identified as needing the services of a hospital, her medical needs surmounted her educational needs and were therefore severable. In Parks v. Pavkovic, the Seventh Circuit District Court contended that whenever a severely emotionally disturbed child needs residential placement, it is not always for other than educational reasons. That court also held that when he/she needs to be hospitalized, it is always for medical, not educational reasons.

When Michelle S. was unilaterally placed in Kings View, it was for a medical crisis; her needs were clearly severable from her educational needs. Because she had an acute need for medical intervention, she was unable to be placed in a residential school. Her needs for medical treatment surmounted her need for an education. Since her hospitalization was not for the purpose of education, the U.S. district court had erred when it determined that hospitalization was a residential placement for which Clovis Unified was responsible under the EAHCA.

There are two cases on point regarding a reviewing court's role in determining whether school districts are responsible for residential placements in psychiatric hospitals. The reviewing court must look at the primary purpose of the contested service or placement to determine whether it is educational within the meaning of the EAHCA. In both Darlene L. and McKenzie v. Jefferson, the court reviewed the purpose of hospitalization and concluded that Congress did not intend that public education agencies enter the field of psychiatric hospitalization by recognizing that pupils are not placed in such facilities for educational reasons.

Costs

When the U.S. district court failed to hear testimony on the costs or to consider such costs of the hospital placement of Michelle, the court also failed to

consider the costs to the states for providing medical services as indicators of Congress's intent to exclude such services from the EAHCA.

The U.S. Supreme Court had implicitly noted in Tatro that cost could be indicative of congressional intent:

> This definition of "medical services" is a reasonable interpretation of Congressional intent. The Secretary could reasonably conclude that it was designed to spare schools from an obligation to provide a service that might well prove unduly expensive and beyond the range of their competence. By limiting the "medical services" exclusion to the services of a physician or hospital, both far more expensive, the Secretary has given a permissible construction to the provision (Irving Independent School District v. Tatro 1984, 3371).

The excluded testimony in the Michelle S. case could have demonstrated that the services the district was being required to pay for at Kings View Hospital were services of a medical nature, provided by persons who traditionally have not been employed by the public schools, and for services for which educators have neither expertise nor training. It was not a simple complaint of high costs for hospitalization, but rather, that the high costs were indicative that Congress did not intend to place hospitalization costs upon the public school system.

Numerous other courts have recognized that even the EAHCA, with its promise of a free appropriate public education for all handicapped children, does not require excessive spending on one handicapped child at the expense of others. The cost differential of $100,000 between the two placements found appropriate by the Michelle S. state

hearing officer should have been heard in the context of costs and appropriate placement decisions. The cases of Katherine D., Roncker, Stacy G., Darlene L., Age, and Takarick all apply.

Sectarian Status

At a trial in the U.S. district court, Clovis Unified's motion to amend its pleadings and to offer testimony on the issue of Kings View's affiliation with the Mennonite Church and subsequent decertification by the state of California was denied. The federal regulations governing the use of federal grant monies for education, including funds generated through the EAHCA, specifically prohibit the use of such funds for religious purposes (Code of Federal Regulations, sec. 76.352). Additionally, the U.S. Constitution frequently has been interpreted as precluding the use of federal funds in institutions that are pervasively sectarian, where excessive entanglement of church and state might occur. There exist numerous case law references that may have had a bearing on Clovis Unified's case.

Conclusions

The first conclusion that can be drawn from this study relates to the time it takes to implement the due process procedures provided by the EAHCA. In July 1985, the parents of Michelle S. notified Clovis Unified that they

wanted the district to pay for Michelle's residential placement costs in Kings View Hospital. The course of administrative hearings led to an order from the hearing officer that Michelle was to be placed at Kings View for the 1985-86 school year.

In September 1985, the district filed for a temporary restraining order and a preliminary injunction. The U.S. District Court for the Eastern District of California denied both motions and set a trial date for October 1985. That date was postponed until March 1986. The trial was eventually held, and in June-July 1986, the Findings of Facts and Conclusions of Law were entered into the record, as was a judgment for Michelle.

Clovis Unified then filed an appeal with the Ninth Circuit Court of Appeals. The appeal was submitted and argued originally in August 1987. The submission was vacated by the appeals court in April 1988, while the district, the state superintendent of instruction, and the State Department of Education prepared a joint appeal. The appeal was resubmitted in March 1990, with a final ruling filed in May 1990. The exhaustion of all due process procedures for both the district and Michelle's parents took nearly five years to resolve.

The second conclusion that can be drawn is that pursuit of resolution of difficult issues involving handicapped children's educational placement and related

services by means of legal counsel and the judicial system is a very costly venture. In the case of Clovis Unified, the retention of counsel throughout the administrative hearings and throughout the trial in the U.S. district court resulted in legal fees that easily exceeded $200,000.

Coupled with this conclusion is that Michelle S.'s parents cross-appealed to the Ninth Circuit Court of Appeals for the payment by the district of their attorney's fees pursuant to the U.S. district court's order of December 8, 1986. It must be noted that when the issue first went to trial in October 1985, attorney's fees were not provided for by the EAHCA. With the passage of the Handicapped Children's Protection Act (HCPA) of 1986, Congress expressly provided that attorney's fees that were pending on or after July 4, 1984 be paid to a prevailing parent or guardian.

As stated under the limitations of this study, conclusions can be made regarding the questions put forward to the Ninth Circuit Court of Appeals. The tribunal provided the following legal conclusions.

School districts need not fund hospitalization for such children as Michelle S. The court of appeals explained as follows:

> It stands to reason that the high cost of her placement is due to the status of Kings View as a medical facility, requiring a staff of licensed physicians, a high staff to patient ratio, and other services which would not be available or required at a placement in an educational institution. While the cost of medical and hospital services are not dispositive, the Supreme Court in Tatro noted that the Secretary of Education, in

> promulgating regulations, excluded "the services of physician or hospital," partly because such services are "far more expensive" than the services, for example, of a school nurse. Clearly hospital care is, and was understood by Congress and the Secretary of Education to be, a far more expensive proposition than is educational residential placement and a greater burden than the states could ordinarily be expected to shoulder in their budgets for education. We, too, recognize the unfairness of requiring school districts to pay for hospitalization on the basis of broad interpretations of ambiguous language in funding statutes such as the EAHCA (Clovis Unified School District--Appellant v. California Office of Administrative Hearings, Michelle S., Real Party in Interest--Appellee 1990, 4811).

With this conclusion, the Ninth Circuit Court of Appeals reversed the U.S. district court's and the administrative hearing officer's order that Clovis Unified had to pay for the hospitalization of Michelle S. during the 1985-86 school year. The court also in effect denied Michelle S.'s appeal for attorney's fees because the reverse order indicated that the family was not a prevailing party and therefore not entitled to attorney's fees under the EAHCA, sec. 1415 (e) (4).

Finally, the Ninth Circuit endorsed the California Master Plan for Special Education by indicating that an appropriate special education delivery system and acceptable standards for educating handicapped children in nonpublic residential facilities does exist.

Recommendations

As the issues of appropriate educational residential placements and the medical services exclusion under the EAHCA were analyzed and resolved in the Michelle S. case,

another layer of clarity about Congress's intent in putting the act into being has come into the voluminous body of case law regarding the implementation of the act. However, the factor of time to effect due process, the factor of costs in carrying out due process, and the factor of ever-increasing special education demands on public school financial resources continue to exist and, in fact, increase.

A theme that recurred consistently in the research of the legal literature was that a badly needed piece of national legislation, the EAHCA, possibly needs to be reexamined, especially in view of the ever-increasing litigation being experienced in implementing the EAHCA. The same is true of the state's debate over how best to allocate its financial resources in order to accommodate all handicapped children.

While the EAHCA intrudes somewhat into the state's traditional decision-making role in the education of the handicapped, the act was not intended to totally supplant the state's prerogative in allocating its financial resources. Educational funding is not unlimited. Competing interests must be balanced to reach a reasonable accommodation. On the one hand are the important personal needs of the individual handicapped child, and on the other, the realities of limited funding and the necessity of assisting in the education of all handicapped children.

Paul Goldfinger, in his article, "Special Education: Too Many Mandates, Too Little Funding--A Formula for Disaster," goes a bit further, in stating that the balance also effects the nonhandicapped child:

> Something is out of balance . . . what was initially hailed as a major step for the equal protection of students with disabilities is now seen by many as giving over-protection to this one class of students (Goldfinger 1995, 5).

Goldfinger points out that under the EAHCA (IDEA), a guarantee of a free appropriate education gives special education first call on a school agency's revenues. This guarantee in combination with some special education abuses is causing conflicts with general education. Such conflicts are depicted as special education costs which ultimately come from revenues meant for other students, an encroachment on a district's general funds.

The bottom line, according to Goldfinger, is that special education students have rights and privileges beyond those available to general education pupils. It is appropriate that all students receive the services they need to benefit from their education. However, due to limited financial resources and the ability of one segment of the school population to have first call on those resources means that the balance of the school population is not equally served.

One of the balances potentially forthcoming, but not recommended, is a series of reverse discrimination suits

originating from the violation of rights of nondisabled pupils. This could be the next litigation explosion; and one that proponents of the EAHCA and proponents for a guaranteed FAPE for nondisabled students should avoid.

Other directions that are recommended for future research, review, and/or reform are as follows:

1. California's hearing officer system needs to be examined critically to ensure that hearing officers have appropriate standards for comparison of assessments of a pupil's need by parents and nonpublic school advocates, and assessments performed by local education agencies. These standards, assessment comparisons, and the hearing officers who implement them need to be more fair.

2. California should use new federal funds as an augmentation for special education, instead of reducing state support for special education. By doing so, the federal government would receive a benefit for providing a higher level of funding for special education. Further, such a move would provide incentive for California special education advocates to seek a higher level of federal funding.

3. California needs to fully fund growth in special education. In 1994-95, only 49 percent of the statutory entitlement for special education was funded. This means that only about half of the growth of pupils enrolled in special education was funded.

4. California and the federal government need to establish a standard that special education pupils are guaranteed in their FAPE that is comparable to that for general education pupils.

5. California and the federal government need to clarify the local education agency placement requirements related to the "least restrictive environment," especially when dealing with the new emphasis on "total inclusion" and placement in nonpublic, nonsectarian schools.

6. California and the federal government need to restrict attorney's fees, so that the cost of such fees do not override sound educational decisions. Two ways this could be implemented are (1) prohibit the payment of fees for any attorney involvement in the development of individualized education program (IEP), which would make this process more nonadversarial, and (2) provide attorney's fees only proportionate to the percentage of issues on which the attorney prevailed.

7. The California and federal governments need to fulfill their promises when the EAHCA was enacted that a 40 percent funding level be maintained, or the state and federal mandates are to be reduced.

8. The California and federal governments need to require that noneducational services be provided by noneducational agencies. Specifically, local health agencies should be required to provide occupational and

physical therapy and other health services. Mental health agencies should provide mental health services under the same due process requirements existent for educational agencies.

CHAPTER V

PROPOSED SPECIAL EDUCATION SERVICES DELIVERY SYSTEM

Introduction

The case study detailed in Chapters I through IV leads to a call for educational leadership to develop better implementation provisions of Public Law 94-142. The strict adherence to the definitions and procedures contained in the federal law in conjunction with the expansive California Special Education Master Plan and enormous body of judicial decisions on special education has led to a loss of trust for educators, in general, which disturbingly includes a growing mistrust of Special Education Local Plan Area (SELPA) personnel, extending even to the special education classroom instructors. This loss of trust and resultant adversarial role of educators with their clients, special education students, and the students' parents needs to be reversed.

Such a reversal needs to lead to new attitudes and roles for school site administrators, district SELPA administrators, and all classroom instructors, regular and special education. The purpose of this chapter, then, is to propose a special education services delivery system that will reestablish the role of school site administrators,

district office personnel, and all classroom teachers as client supporters and advocates not only for special education students, but for all students served by public educators.

General Philosophy

Educators, in general, have lost their focus and, thereby, their purpose in providing aggressive leadership and equitable access to education for handicapped children. A social philosophy underlying the delivery of special education services needs to be rearticulated. The founding documents of the nation stress the proposition that all men are created equal. Time and time again, this statement has been interpreted to mean that all men are equally human. All other rights are derived from this humanness, including the right of access to education. This right is not dependent on a level of intelligence, a degree of physical perfection, or a standard of emotional stability. Therefore, each child has a right of access to education regardless of level of intelligence or physical or emotional disabilities. Various courts and educational institutions have acted over the years to define and redefine what is reasonable in providing this access. Certainly in the cited case in this study and in many other cases, consideration of the fiscal impact of providing this equal access to education is allowed; however, the philosophy behind Public Law 94-142 needs to be reasserted. Congress, representing

society, looks to the leaders of schools to seek out, identify, and guarantee a free, appropriate public education to every handicapped child under a clearly defined system of due process. This is, then, the articulated philosophy and the focused role of educators in the proposed special education delivery system that follows.

Goal Sharing

Clovis Unified School District has initiated a new interactive leadership system called Goal Sharing. One of the foundational premises of Goal Sharing addresses the need to reestablish trust between educators and the clients they serve.

For too long, educators have told their clients, the district's parents and taxpayers, what an education is. For too long, educators have devised education's policies, practices, and procedures without the input of their clients. Educators have decided both the "what" and "how" of education, with little, if any, input from their client constituency. When the definition of education or the processes of education have been questioned, for too long, educators have responded defensively or adversarially with their clients. Goal Sharing provides a proactive, collaborative inclusion of all clients in the district's educational decision-making process. The Goal Sharing model currently consists of seven advisory councils, whose membership is a broad-based collection of students, parents,

clergy, chamber of commerce representatives, business leaders, educational leaders, teachers, civic leaders, employees of the district, and members of the governing board. Each council's primary purpose is to survey and poll all the district's clients as to what the attributes of a quality education are. The councils also review district policies, practices, and procedures in order to recommend to the governing board and administration, systemic changes and improvements. The educational products and services desired by the clients of the district will hopefully improve through this community collaborative effort. The councils are formed to focus on the functions suggested by their respective titles, i.e., the Accountability, Student Standards/Community Support, Administrative Services, Cognitive Domain--Mind, Psychomotor Domain--Body, Affective Domain--Spirit, and Communications Councils.

Goal Sharing: Special Education Advisory Council

The proposed special education delivery model starts by creating an additional district council in the Goal Sharing paradigm:

The Special Education Council shall consist of at least the following: a representative from the district's child development program (preschool age), a parent from the child development program, a special education parent from each educational level (K-6, 7-8, 9-12), a special education

teacher from each educational level (K-6, 7-8, 9-12), the district SELPA administrator, a district psychologist, a regular education teacher from each educational level (K-6, 7-8, 9-12), a regular education parent from each educational level (K-6, 7-8, 9-12), a principal from each educational level (K-6, 7-8, 9-12), a clergyman, a local university representative, a civic leader, a business person, a member of the judiciary, a member of the bar, representatives from various special education advocacy groups, general representatives from the community at large, and representatives from the medical professions (doctors and/or nurses).

Goals: Goal Sharing Special Education Council

The goal for the Special Education Council is to proactively and collaboratively include the district's clients in determining what quality special education programs are and to provide client input into how to effect equitable access to education for all handicapped children. The processes that have been most successful for the implementation of the Goal Sharing model are described below as process objectives.

I. Determine what special education is currently (staff, services, funding, facilities, history, law).

II. Inform all clients (all parents, regular and special education; all staff, regular and special education; the total community) about current services.

III. Poll all clients as to what special education should be in the district.

IV. Prioritize input and establish short-term goals (one year) and long-term goals (three to five years).

V. Recommend policies, practices, and procedures which will achieve both short-term and long-term goals to the governing board.

A secondary goal for the Special Education Advisory Council is to communicate the role of the advisory council to the special education clients of the district. This communication should serve as the impetus for providing a community-wide knowledge base of the special education services available, the identification and early intervention processes available, and finally, a supportive resource/advocacy group for all handicapped children in the district.

Outline of Special Education Advisory Council Orientation for Preschool Parents, All Existing District Parents and Employees, and the Community at Large

I. Handicapped Education before 1975

A. Institutionalization

B. Exclusionary Doctrine

C. Special classes

D. Categorical services

E. Normalization or least restrictive environment

F. Elementary and Secondary Education Act of 1966

G. Brown v. Board of Education (1954)

H. PARC (1971)

I. Mills (1972)

J. Rehabilitation Act of 1973, sec. 504

II. The Education for All Handicapped Children Act of 1975; EAHCA; P.L. 94-142

A. Code of Federal Regulations, Title 34, parts 300 and 104.

B. Purpose: (20 U.S.C. 1400 et seq.)

C. Definitions in EAHCA

1. FAPE (20 U.S.C. sec. 1401 (a) (18))

2. Handicapped children (20 U.S.C. sec. 1401 (a) (1)

3. Learning disabilities (20 U.S.C. sec. 1401 (a) (15)

4. Special education (20 U.S.C. sec 1401 (a) (16)

5. Related services (20 U.S.C. sec. 1401 (o) (17)

D. The Handicapped Children's Protection Act of 1986; P.L. 99-392; :Attorney's Fee Bill," (20 U.S.C. sec. 1415 (e) (4) and (f)

E. The Individuals with Disabilities Act of 1990 (IDEA)

III. California Handicapped Education History

A. Special schools and classes

B. Increased categories of service

C. Day classes

D. Residential schools

E. Mandatory programs

F. California Education Code, part 30 (1980)

IV. Case Law

A. Federal

1. U.S. District Courts (F.Supp.) (Trial)

2. U.S. Courts of Appeal (F.2d) (Appeals)

a. Eleven Circuits

b. D.C. Circuit

c. Federal Circuit

3. U.S. Supreme Court

B. State

1. Superior Court (Trial)

2. California Courts of Appeal (Districts) (Appeal)

3. California State Supreme Court

C. State Agency Administrative Hearings

1. Education of Handicapped Law Review (E.H.L.R.)

V. Clovis Unified School District as Special Education Local Plan Area (SELPA)

A. Policies

1. CUSD Policy 2109, sec. 504 of the Rehabilitation Act (1973)

2. CUSD Policy 3306, Least Restrictive Environment

3. CUSD Policy 3307, Independent Education Evaluations

4. CUSD Policy 3308, Exceptional Children

a. CUSD Administrative Regulation 3308

B. Practices

1. Referrals: parental consent

2. Assessment by trained specialists

3. Development of Individualized Education Program (IEP)

4. Certification/decertification of learning disability

5. Home school placement

6. Mainstreaming

7. Resource Specialist Program

8. Special Day Class Program

C. Procedures for Dispute Resolution

1. Rights

2. Due Process

a. Premediation conferences

b. Mediation conference

c. Fair hearings

d. Trial Courts

e. Courts of Appeal

f. Supreme Courts

3. Requests for Fair Hearings

a. Institute for Administrative Justice, McGeorge School of Law

b. Advocacy Assistance, Protection and Advocacy, Inc.

VI. Proactive Preparation for Future Issues

A. Discipline of handicapped students

B. Attention Deficit Disorder (ADD)

C. Total Inclusion: Teacher training

D. Section 504 disabilities

Learning Activities for/by the Special Education Advisory Board

The Special Education Advisory Council would have to conduct a series of seminars regarding the current status of special education in the district, state, and nation.

At the first seminar, one goal would be to explain the desired changing of current perceived roles of school personnel used now in the implementation of special education and related services. There is an excellent seventy-five-minute film entitled The Face of Inclusion: A Parent's Perspective. The film is available from LRP Publications in Pennsylvania.

The film provides a unique and moving parent's perspective of inclusion for administrators, teachers, and parents of children with disabilities. Joe and Ro Vargo are

the parents of three daughters, the oldest of whom has Rett Syndrome.

The Vargos are experienced advocates for inclusive education and have been involved in systemic educational reform for years. They share their family philosophy, their early decision to enroll their daughter in an inclusive program, the risks and benefits, and the support systems necessary to be successful. Their stories of inclusion have forever changed their lives for the better.

A second seminar should be focused on the evolving status of special education in the nation, state, and Clovis Unified School District. The history of PL 94-142 and its implementation in California should be presented and concluded with a description of the current status of special education and related services in the Clovis Unified School District. This is especially important because the district SELPA has just reorganized its special education services delivery model. Essentially, the model was presented as a voluntary reclassification of approximately five hundred Special Day Class (SDC) students to the more inclusive Resource Specialist Program (RSP). The rationale for this delivery system modification was that more state financial revenue would be generated and more RSP teachers would become available for special education student consultation. Additionally, the new consultative RSP personnel would be able to provide more training and support

to the regular education teaching staff, who would be instructing many more RSP students in their new and much more inclusive regular education classes.

A third foundational seminar would be an in-depth look at national, state, and district special education revenues and expenditures. With an understanding of the financial status of the SELPA in combination with a knowledge of the law and its incumbent due processes, the Special Education Advisory Council could be used for input on new or revised board policies, practices, and procedures that could be formulated to provide more collaborative, collegial administrative, faculty, and parent input in achieving a positive advocacy for achieving equal access to a free and appropriate education for handicapped children.

A final foundational seminar would provide a review of current literature on implementing an inclusive method of special education for handicapped children. A SELPA library of texts and videos should be created for the use of the new partners in the Goal Sharing. The following listing would be the essential start-up bibliography for such an advocacy council library.

Periodicals

Inclusive Education Programs

A monthly newsletter dedicated to the legal and practical issues in educating children with disabilities in regular education environments. $135.00

California Special Education Alert

A monthly newsletter dedicated to providing the latest legal decisions and methodologies for successful special education programs in California. $235.00

Videos

The Face of Inclusion: A Parent's Perspective

Illustrates the Joe and Ro Vargo parental experience with inclusionary education for their daughter who has Rett Syndrome. 75 mins. $109.00

ADHD: Inclusive Instruction and Collaborative Practices

Teaches what Attention Deficit Hyperactivity Disorder is and provides a review of successful and proven team and classroom approaches. 38 mins. $104.00

The Seven Deadly Sins: Common Mistakes that Lead to Due Process Hearings

Melinda Maloney, special education attorney, reveals seven common mistakes that lead to due process hearings. Case studies are reviewed, and legally based advice is given to handle such cases. 20 mins. $79.00

How to Discipline Students with Disabilities Effectively and Legally

Special education students may be disciplined: suspended and expelled if the conduct is not caused by a disability. This video illustrates how to comply with the procedures to protect civil rights and how to provide alternative educational placements. 20 mins. $79.00

Inclusion: Heaven or Hell?

Reviews of inclusion, mainstreaming, least restrictive environment, and the regular education initiative should provide guidance for districts to advocate compliance. 20 mins. $79.00

Special Education for Regular Teachers

An in-house training for principals, superintendents, board members, and other regular education professionals. Video provides tips for compliance without breaking budget. 20 mins. $79.00

Public Law 94-142: An Overview	26 mins.	$170.00
Section 504 of the Rehabilitation Act	28 mins.	$170.00
Discipline	17 mins.	$170.00
Extended School Year Services	17 mins.	$170.00
Least Restrictive Environment	20 mins.	$170.00
Procedural Due Process	20 mins.	$170.00
Attorney's Fees	20 mins.	$170.00
Residential Placement	15 mins.	$170.00
Serving Medically Fragile Students	20 mins.	$170.00
New IDEA Amendments	20 mins.	$170.00

Books

Least Restrictive Environment: Paradox of Inclusion, by Lawrence M. Siegel, Esq. $32.00

Discipline in the Schools, by Eric Hartwig, PhD, and Gary Rusch,Esq. $31.00

Section 504, the ADA, and the Schools, by Perry A. Zirkel, PhD, and Jeanne M. Kincaid, Esq. $82.00

The Continuing Evolution of Special Education Law, 1978-1995, by Melinda Maloney, Esq., and Brian Shenker. $28.50

Establishing such an essential library would cost nearly $3,000; however, such a financial outlay would be an excellent first step in answering the call stated at the beginning of this chapter to reaffirm the original philosophical foundations of Public Law 94-142 to reestablish the trust of educational clients: parents and students, classroom teachers, and special education administrators.

Shared knowledge by both school officials and clients applied pursuant to a collegial advocacy partnership, i.e., Goal Sharing, has had and can continue to have a major role in accomplishing equal access to education for all students, especially those who have disabilities. In reality, such concepts must be successful or further growth of the adversarial relationship will continue to grow, and the competition for the already scarce financial resources will continue to stay on its less productive cycle.

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